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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1927

No. 768 68

FOSTER-FOUNTAIN PACKING COMPANY, INC., AND SEA FOOD COMPANY, APPELLANTS,

vs.

E. J. HAYDEL, FRED SCHOUEST, L. R. CABRIAC, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA

FILED FEBRUARY 14, 1928

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IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, AT NEW ORLEANS

No. 1897. In Equity

FOSTER FOUNTAIN COMPANY, INC., et al.

vs.

E. J. HAYDEL et al.

BILL OF COMPLAINT—Filed Sept. 6, 1927

To the Honorable Louis H. Burns, Judge of said Court:

Comes the Foster-Fountain Company, Inc., a corporation organized under the laws of the State of Louisiana, and domiciled in the City of New Orleans, in the State of Louisiana and the Sea Food Company a corporation organized under the laws of the State of Mississippi, domiciled at Biloxi, Harrison County, Mississippi, in this their original bill of complaint exhibited in this Court against E. J. Haydel, Fred Schouest, L. R. Cabriac, Louis A. Marks, Sheriff of St. Bernard Parish, of the State of Louisiana; Ernest Alberti, Sheriff of Plaquemine Parish of the State of Louisiana; Leander H. Perez, District Attorney in and for the Parishes of St. Bernard and Plaquemine of the State of Louisiana; Percy Saint, Attorney General of the State of Louisiana; Valentine K. Irion, Commissioner of Conservation of the State of Louisiana; all adult residents of the Eastern District of Louisiana, within the jurisdiction of this Honorable Court, and respectfully show unto the Court the following statement of facts:

I.

This suit is brought in a court of equity of the United States and the jurisdiction of the Court is asserted and

claimed for that, the complainants are threatened with and subjected to the irreparable harm, injury and damage hereinafter set out, and are without adequate remedy except in a court of equity. This suit is brought for injunction, and other equitable relief.

II.

The amount involved in this suit exceeds the sum of Three Thousand Dollars, including interest and costs in that the complainants have entered into a contract, hereinafter set out for the sale of shrimp of the value greatly in excess of Three Thousand Dollars, which they will be prevented from complying with unless they obtain the relief prayed for in this cause, and the value of the contract, and the immunity of the complainants from liability, penalty and forfeiture complained of herein, and the value of the right of the Foster Fountain Company, Inc., to sell to the Seafood Company, and the value of the right of the Seafood Company to accept compliance on the part of the Foster-Fountain Company, Inc., with the contract hereinafter set out, and the loss and inconvenience, harm, injury and damage which would be caused each of the complainants if denied the relief prayed for, would greatly exceed the sum of Three Thousand Dollars, exclusive of interest and costs, as will more fully hereinafter appear.

III.

This is a controversy arising over the Constitution and laws of the United States, in that the complainants allege aver and claim that Sections 4, 10, 12, 13, 14, 15, 16, 19 and 21 of Act Number 103, passed by the Legislature of the State of Louisiana, and approved July 8th, 1926, appearing in the published acts of the State of Louisiana, beginning on page 152 are in contravention of and violate Paragraph 3, Subdivision 8, Article 1 of the Constitution of the United States conferring upon Congress the exclusive power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes, Paragraph 2 of Article 6, containing the following provision:

[fol. 3] "This constitution, and the laws of the United States which shall be made in pursuance thereof, and all

treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."

Article 1, of the Fourteenth Amendment to the Constitution of the United States, contains the following provision:

"I. Who are citizens.—All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Complainants further claim that said Act of the Legislature of the State of Louisiana, and especially the sections hereinbefore set out, if so construed as to deny the complainants the relief prayed for in this bill of complaint, violates Section 2 of the Bill of Rights of the State of Louisiana, in the following language:

No person shall be deprived of life, liberty or property, except by due process of law. Except as otherwise provided in this Constitution, private property shall not be taken or damages except for public purposes and after just and adequate compensation is paid."

And also Section 14 of Article 19, of the Constitution of the State of Louisiana, containing the following language:

"It shall be unlawful for persons or corporations or their legal representatives, to combine or conspire together, or to unite or pool their interests for the purposes of forcing up or down the price of any agricultural product or article of necessity for speculative purposes; and all combinations, trusts, or conspiracies in restraint of trade or commerce, and all monopolies or combinations to monopolize trade or commerce, are hereby prohibited in the State of Louisiana, and it shall be the duty of the Attorney General

of his own motion, or any District Attorney of the State, when so directed by the Governor or the Attorney General, to enforce this provision by injunction or other legal proceedings, in the name of the State of Louisiana, and particularly by suits for the forfeiture of the charters of offending corporations, incorporated under the laws of the State of Louisiana and for the ouster from the State of foreign corporations. Provided however that nothing herein contained shall prevent the Legislature from providing additional remedies for the enforcement of this section.

The provisions of this section are self-operative."

IV.

The complainant, Seafood Company, is engaged in the catching, canning, and packing of shrimp at Biloxi, Mississippi, which shrimp by it are sold in interstate commerce to all parts of the United States, and are exported to England, France and Germany. That the history of shrimp as a valuable food goes back to the beginning of mankind, and is used all over the world; that there are hundreds of type of shrimp, but that in this country shrimp are used principally by restaurants, hotels, and homes, where shrimp are used in some form in the making of salads, and/or in what is called "shrimp cocktails"; that its greatest value is obtained after being packed and shipped in interstate and foreign commerce, to those parts of the country where seafood cannot be obtained in its fresh or native state; that at Biloxi, Harrison County, Mississippi, there are [fol. 4] located a number of shrimp packing plants; that there are situated in Biloxi about twenty plants; that during the shrimp season they employ approximately a thousand men, and three or four thousand women and children, that there is invested in the shrimp industry at Biloxi, Harrison County, Mississippi, approximately one and one-half millions of dollars, and there are at least two thousand families that directly depend upon this and the oyster industry as a means of livelihood; that during the year 1926, which was not a favorable year for the industry, there were canned in or around Biloxi, Mississippi, one hunderd and sixty-six thousand (166,000) cases of shrimp of the

value of approximately One Million ($1,000,000) Dollars; and that the industry at Biloxi, Mississippi comprises approximately one-fourth of the shrimp industry of the United States. That owing to topographical and climatic conditions, community life, and other economical conditions unnecessary to be set out, the Mississippi coast is, and has always been, splendidly adapted to the industry; that the packing plants, including that of the complainants, Seafood Company, at Biloxi, Mississippi have large investments in grounds, buildings and machinery, and use the latest devised machinery and appliances, as well as the most expert and economical methods rules and devices in the development of the industry.

V.

Complainants show unto the Court that the shrimp is a migratory fish of such a nature that its real place of incubation is not with certainty known even to the most expert fish catchers. Shrimp are found all over the Gulf of Mexico, it not being possible with certainty to tell whether these shrimp breed or spawn in the local bayous of Louisiana, Mississippi and Alabama, or whether they have some other breeding place, and come to the coast from the outside waters of the Gulf. These shrimp are always to be found in unlimited numbers almost exclusively in the waters of the State of Louisiana, within three miles of the shore line, lying west of the channel of Pearl River. The territory from which Mississippi chiefly gets its shrimp in Louisiana is that territory which lies south of Orleans Parish and Lake Pontchartrain, west of the channel of Pearl River north of that chain of islands called Chandeleur Islands, and east of the Mississippi River. This territory embraces principally the Parish of Plaquemine and St. Bernard, which Parishes consist of an alluvial belt along the each bank of the Mississippi River, varying in depth from one to fifteen miles, and then by a series of bays, bayous, lagoons and marshes, which are generally termed and known as "Louisiana Marshes;" the land being lower than sea level at extraordinary high tides and during hurricane tides being entirely covered with water to such an extent that very little of the two Parishes are free from the high tide. This

territory also includes that part of the Mississippi Sound belonging to Louisiana, Lake Borgne and west of Breton Island, lying north of Chandeleur Islands.

Complaints show unto the Court that the waters of the State of Mississippi for some unaccountable reason, do not afford a certain and adequate supply of shrimp, and that the complainant Seafood Company, and other persons, firms and corporations, engaged in packing shrimp on the Mississippi coast, are practically dependent for the shrimp used by them in operating their business and in supplying the demands of interstate and foreign commerce, upon the shrimp obtainable in large and unlimited, never ceasing and ever growing quantities, from the waters of the State of Louisiana east of the Mississippi River, hereinbefore referred to.

VI.

The complainants show unto the Court that the most common method of catching shrimp is for boats equipped with gasoline engines, varying in size from fifteen to twenty feet, to go into all parts of the waters of Mississippi Sound, Louisiana marshes, and the Gulf of Mexico, within three miles of the Louisiana shore, and fish for these shrimp by means of a net which trails from the rear end of the boat, which net is called the "trawl"; and the method of catching shrimp with the trawl is for this net to trail for a certain time while the boat is propelled by its engine, and then to be gradually drawn into the side of the boat, thereby bringing the shrimp that it has intercepted into a bag, which is hoisted up into the boat, and the shrimp deposited in the boat. When several hundred barrels of shrimp have been [fol. 5] deposited on a freight boat, where they are packed in ice, this boat, which is propelled by gasoline, then goes to Biloxi and unloads the shrimp off on the wharf of the factory owning the boat. The shrimp are then placed in large containers that are rolled on wheels and are carried into a shed where they are taken from the containers, placed on large trays, and the head and hulls are packed from the live or dead shrimp by hand. This work is accomplished by the use of a large number of women and children, and men who are unable to perform other manual labor, the act of picking the shrimp entailing very little, if any, manual labor,

but being assisted greatly by the skill of the picker. After the shrimp are picked, in most cases, the heads and hulls are thrown away into the water, where they are consumed by crabs, eels and other scavengers of the sea; but in some instances these heads and hulls are kept and placed in a boiler and boiled, and are then placed on a rack and dried, and after going through this process they are called "shrimp bran," and are used to a small extent in the manufacture of commercial fertilizer, the only plant that uses it in quantities being a plant located at or new Biloxi, Mississippi, and the amount of it used at all is negligible.

VII.

Complainants show unto the Court that owing to topographical, physical, climatic and other economical conditions not necessary to be set out, it has not been economical, practical or possible to pack shrimp in that portion of Louisiana contiguous to the waters of Louisiana heretofore described and east of the Mississippi River; that there is but four plant- in that territory and the operations thereof have never been successful.

VIII.

Complainants show unto the Court that the Foster-Fountain Company, Inc., complainant, is engaged in the catching, packing and canning of salt water shrimp, that it operates a shrimp hulling plant on the west bank of Pearl River in the State of Louisiana, near Pearlington, Mississippi; that the complainant, Foster Fountain Company, Ins. has contracted to sell, transport and deliver to the complainant, Seafood Company, during the packing season of 1927-1928, beginning upon the 15th day of August, 1927, and ending upon the 15th day of June, 1928, one carload of shrimp per month; that the said contract is based upon a valuable consideration to be paid by the Seafood Company, complainant to the Foster Fountain Company, Inc., complainant; that the said Foster Fountain Company, Inc. are to catch or purchase said shrimp in the waters of the said State of Louisiana aforesaid, and to convey and transport the same from the State of Louisiana to the complainant Seafood Company in the State of Mississippi; that the obtaining of

said shrimp is necessary on the part of the Seafood Company in order that it may supply the demands of its business in interstate and foreign commerce, and in order that it may keep its plant at Biloxi, Mississippi, in operation. That the said Seafood Company has a large amount of money invested in said plant, to-wit, approximately the sum of One hundred and fifty thousand ($150,000.00) Dollars; that it employs a large number of men, women and children, that unless it can obtain the supply of shrimp under the terms of said contract from the Foster Fountain Company, Inc. its business will be destroyed, its plant rendered valueless, its business ruined, and its employees thrown out of employment. That the Foster Fountain Company, Inc. will either acquire or catch, strictly in accordance with the term- of the statute hereinbefore referred to of the State of Louisiana, shrimp to comply with said contract, and is ready, willing and able to comply therewith. Each of the parties hereto are able, ready and willing to comply with those conditions and covenants contained in said contract obligatory upon them, and they now offer to do so. That a copy of said contract is hereto attached and made Exhibit "A" hereto, the same being asked to be considered as if set out herein in full in words and figures.

IX.

That the defendants herein threaten to interfere with the performance of this contract and threaten to prosecute the Foster-Fountain Company, Inc. its agents, servants and employees and seize and confiscate its property, if it shall perform said contract; and threaten to prosecute the complainants, Seafood Company, its agents, servants and employees, and confiscate its property, if it shall within the State of Louisiana accept compliance with any part of said contract.

[fol. 6] Complainants show unto the Court that upon the 28th day of July, 1926, the Legislature of the State of Louisiana having passed, there was approved an Act known as Number 103, being House Bill 177, known as the "Shrimp Law," which appears in the published Acts of the Legislature of the State of Louisiana, beginning on page 152; that a copy of said Act is hereto attached marked Exhibit "B" hereto,

and asked to be considered as if set out herein in full words and figures; that Section 4 of said Act contains the following language:

"Section 4. That the right to take salt water shrimp from the waters of this State and the right to can, pack or dry the said shrimp when caught are hereby granted to any resident of this State, to any firm or association composed of residents of this State, or to any corporation domiciled in or organized under the laws of this State, operating a canning or packing factory or drying platform in this State. These rights shall be confined to such persons and corporations and are granted subject to the further conditions hereinafter stipulated. It shall be unlawful for any person not a resident of this State, or for any firm or association not composed of residents of this State, or for any corporation not domiciled in or incorporated under the laws of this State to catch salt water shrimp in the waters of this State, or to can, pack or dry in any factory or on any platform in this State, any salt water shrimp caught from the waters of this State; and any person, firm or corporation so violating the provisions of this Section shall be liable to the penalties hereinafter provided."

That Section 10 of said Act provides a license tax on seines and trawls; that Section 12 provides a severance tax on shrimp; that Section 13 of said Act is in the following language:

"Section 13. All salt water sh-i-p and the shells or hulls and heads of all salt water shrimp are hereby declared to be the property of the State, and the shells or hulls and heads to be valuable for use as a natural resource of the State as a fertilizer in the State; and it shall therefore and hereafter be unlawful to export from the State of Louisiana any salt water shrimp from which the shell or hull and head shall not have been removed.

In order that all of these inhabitants of the State of Louisiana may enjoy the State's natural food product, it shall be lawful to ship unshelled shrimp from any point in the State of Louisiana to any other point in the State of Louisiana for edible consumption, subject to such regulations and restrictions as may be imposed by the Department

of Conservation. Any person, firm or corporation of this State who shall lawfully take any shrimp from any of the waters of the State or lawfully acquire the same, shall have a qualified interest or property in the shrimp so taken or acquired in the shells, which qualified interest may be sold or transferred to any other person, firm or corporation within the limits of the State; and after the edible portions of the abdomen popularly called tail meat of said shrimp shall have been removed from the shell within the State of Louisiana, such lawful take- or possessor, his heirs or assigns, as the case may be, shall be vested with all of the rights and property of the State in and to said shrimp tail meat and shall have the right to sell such shrimp tail meat or ship the same beyond the limits of the State, without restriction or reservation."

That Sections 14, 15 and 16 provide for taxes and licenses; that Section 19 provides certain penalties for a violation of said Act, said Section 19 being in words and figures as follows, to-wit:

[fol. 7] "Section 19. That any person, firm or corporation or common carrier, their agents and officers violating any provisions of this Act, where a punishment has not been otherwise provided shall be guilty of a misdemeanor and shall *no* conviction thereof be fined not less than Twenty-five Dollars ($25.00) or not more than One Hundred Dollars ($100.00) for the first offense, nor less than One Hundred Dollars ($100.00) nor more than Two Hundred Dollars ($200.00) for the second offense and for the third offense the fine shall not be less than One Hundred Dollars ($100.00) nor more than Two Hundred Dollars ($200.00) and in addition the license under which operations are being conducted shall be revoked. For each offense the courts may impose a sentence in the parish jail for not less than five days nor more than thirty days, or may impose both fine and imprisonment at the discretion of the court for each offense; and in addition thereto the boats, seines or other devices used in such violations may be confiscated by order of the Court.

Vessels, their tack*el* and apparatus, used in illegal taking of salt water shrimp from the waters of the State, or used in the illegal transportation of salt water shrimp taken

from the waters of this State, shall be seized and taken into possession by the officers or inspectors of the Department of Conservation charged with the enforcement of the conservation laws, shall be delivered to the Sheriff of the Parish wherein the violation of the law occurred the Sheriff being authorized to permit of the release of the said vessel from seizure upon the owner thereof furnishing a bond satisfactory to the Judge of the District Court having jurisdiction, providing for the return of such vessel and its apparel and apparatus to abide the judgment of the Court. Such vessel shall be liable to forfeiture upon proceedings being instituted to that end by the District Attorney having jurisdiction, and the Judge of the District Court having jurisdiction shall be authorized to decree the forefeiture of such vessel shall be sold at public auction by the Sheriff having jurisdiction and the proceeds of sale of said vessel, its apparel and apparatus, less the cost of the seizure, keeping and sale, shall be paid into the State Treasury to the credit of the Department of Conservation. Any person, firm or corporation found guilty by the Court of violating the provisions of this law prohibiting the exportation of salt water shrimp from the State, unless and until the hull or shell and head shall have been previously removed therefrom within this State shall be liable to a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00) or to imprisonment of not less than six months (6) nor more than one (1) year and shall be liable to both fine and imprisonment in the discretion of the Court."

XI

The complainants show unto the Court that the Foster-Fountain Company, Inc. is ready, willing and able to comply with its contract with the Seafood Company, co-complainant, but that if it shall attempt to do so it will be prosecuted and its vessels and property seized for confiscation under said Act by the defendants herein referred to.

[fol. 8] Complainants show unto the Court that if the sections of said Act, especially Sections 13 and 19, are valid the complainant, Foster-Fountain Company, Inc., its agents, servants and employees, will be subjected to prosecution and will be liable to fine of not less than Five Hundred ($500.00) Dollars, nor more than One Thousand ($1,000.00)

Dollars, or to imprisonment of not less than six months nor more than one year, or to both, within the discretion of the court.

The complainants show unto the Court that each act of shipment would be a separate offense, and that the contract which the complainant, Foster-Fountain Company, Inc., has entered into with the complainant, Seafood Company, would require several deliveries on the part of its agents and servants during each day, and the agents and servants of the Seafood Company would be subjected to the same prosecution if delivery should be taken under said contract in the State of Louisiana, and that the employees of each of said complainants, and the complainants themselves, would be annoyed, troubled, harrassed, and would be prevented from carrying out and performing said contract, and, in addition thereto, their vessels and equipment would be seized and subjected to forfeiture, by reason of which the plaintiffs, and each of them, their agents and servants, would suffer irreparable harm and damage.

XII

The complainants show unto the Court that Section 4 of said Act violates the Fourteenth Amendment to the Constitution of the United States, hereinbefore set out, in that while the Foster-Fountain Company, Inc., maintaining a hulling plant in the State of Louisiana, is given the express right to take shrimp from the waters of the State of Louisiana, this section attemp-s to prohibit them from so taking the shrimp unless they are operating a canning or packing factory or drying platform in the State of Louisana, and in giving this right to other residents of the State regardless of whether they own such a canning or drying platform in the State or not; and violates the Fourteenth Amendment to the Constitution of the United States, in that the complainants are denied the rights and immunites of citizens, are denied the equal protection of the law, and are deprived of their property without due process of law.

Complainants show unto the Court that the said Foster-Fountain Company, Inc. could only operate a canning and packing plant in the State of Louisiana contiguous to the waters of the State of Louisiana above referred to at great loss.

Complainants show unto the Court that Section 13 of said Act is unconstitutional, in that it attemp-s to compel the Foster-Fountain Company, Inc. to pack shrimp in Louisiana at a loss to themselves as a condition precedent to their making and filling contracts in interstate commerce.

Complainants further show unto the Court that the Act of the State of Louisiana especially permits and authorizes shrimp to become the subject of barter, sale and trade, and to become an article of interstate commerce, and permits each of the complainants to acquire the same in the State of Louisiana; but said Act violates the Fourteenth Amendment to the Constitution of the United States, in that they are forbidden from shipping the same out in the hulls; that for the same reason said act violates that Section of the Constitution of the State of Louisiana hereinbefore set out.

The complainants further show unto the Court that Section 13 of said Act violates the Commerce Clause of the Constitution of the United States, in that said section imposes a direct burden upon interstate commerce; that said section was not passed to conserve the natural resources of the State of Louisiana, because said Act expressly permits the natural resources of the State, to-wit, both the shrimp and the hulls to become the subject of barter and commerce and to pass from the State of Louisiana; but that the effect and purpose of said Act is to compel the packing [fol. 9] and manufacture of said shrimp inside of the State of Louisiana which requirement has no relation to a proper exercise of the police power of the State by the Legislature of the State of Louisiana, has no relation to a conservation of the natural resources of the State, but that said section is unreasonable, unlawful, arbitrary, and was provided for the purpose of compelling the packing and manufacture of said shrimp in the State of Louisiana, thereby directly burdening interstate commerce; that, therefore, said Section 13 of the Act violates the Commerce Clause of the Constitution, as well as the Fourteenth Amendment thereto, and that provisions of the Constitution of the State of Louisiana hereinbefore referred to.

Complainants further show unto the Court that said section violates the Fourteenth Amendment to the Constitution of the United States, as well as Section 14 of the Constitution of the State of Louisiana, as well as the Commerce Clause of the Constitution of the United States, in

that the effect and purpose of the section is not only to impose a direct burden upon interstate commerce, but to create a monopoly in the manufacture and sale of shrimp, and place the same in the hands of a small number of corporations engaged in the business in the State of Louisiana; that the necessary effect of the Act will be to reduce the market price of the raw shrimp and to increase in interstate commerce the price of the finished product. That said Section 19 of said Act was put in the Act for that and no other purpose; was intended to and will have the effect of burdening interstate commerce by increasing the price of the finished product to the ultimate consumer, and creating a monopoly. That said Section 19 further violates the Fourteenth Amendment to the Constitution of the United States, in that it deprives each of the complainants of their right to contract to purchase shrimp with the hulls thereupon and ship the same in interstate Commerce.

Complainant would show unto the Court that prior to the passage of the Act passed by the Legislature of the State of Louisiana, complained of herein, a large portion of the shrimp caught in the waters of Louisiana described herein were shipped in the raw state from said State, and as to the shrimp consumed within the State only a negligible quantity of the hulls ever were, or are now since the passage of the Act, being used as a fertilizer; that no plant in the State of Louisiana has ever been, or is now, using the hulls of shrimp for such purpose; that at all times prior to the passage of this Act, and since the passage of said Act, the hulls of the shrimp caught in said waters have been, and are now, substantially all being thrown away, and that the alleged purpose to reserve the hulls of said shrimp as a fertilizer is merely a subterfuge to justify, if possible, a violation of the 14th Amendment to the Constitution of the United States and the Commerce Clause of the Constitution of the United States hereinbefore set out; that the hulls of shrimp are not of great value as a fertilizer; and at no time in the State of Louisiana has there been any special demand therefore, and that the Legislature of the State of Louisiana in passing the Act did not do so for the purpose of using said hulls as a fertilizer. Complainants state, however, that they are willing and now offer to return to the State of Louisiana the raw hulls of any shrimp which may be removed by complainants under this

contract subject to such rules and regulations as this Court may order.

XII-B

Complainant further shows that the Foster-Fountain Company, Inc., for years past have been engaged in purchasing shrimp from citizens of Louisiana, who, under Section 4 of the Act hereinabove referred to, have the right to catch sh-imp in the waters of the State of Louisiana, paying to these citizens of Louisiana not only the market price for said shrimp but a price in excess of the market price of said shrimp which said shrimp were later shipped [fol. 10] by said Foster Fountain Company, Inc. to its plant at Biloxi, Mississippi, and there canned and shipped to all parts of the world.

That it now has the opportunity to make such purchase of shrimp from citizens of the State of Louisiana where, under the law herein complained of, shrimp are made the subject of barter and sale and can from said citizens secure a plentiful supply of said shrimp with which to fulfill its contract and to keep its plant in operation, but that on account of the section hereinabove referred to and the laws of the State of Louisiana herein exhibited, it is prevented from shipping said shrimp from Louisiana in its raw state to the State of Mississippi, and complainant is advised and believes that at this time that the officers who are charged with the duty of enforcing said laws are presently patrolling the waters of the State of Louisiana threatening to arrest any and all persons violating said law and with specific instructions to seize and confiscate the boats of complainants were complainants to endeavor to ship said shrimp — its factory in Biloxi, Miss. and thereby complainants are unable to now carry out its contract made with the complainant, Seafood Company, or to operate its business at a profit in the City of Biloxi, all of which said acts on the part of the officials of the State of Louisiana, as well as said section hereinabove referred to, violate the commerce clause of the constitution of the United States in that by refusing to allow the shipment of the shrimp purchased lawfully by the complainant, Foster-Fountain Company, Inc., in Louisiana to be shipped to the State of Miss. the complainant, Foster-Fountain Company, Inc. is compelled to dispose of said shrimp in Louisiana at a loss, thereby imposing a direct

burden upon interstate commerce, and further said acts violate the fourteenth amendment of the constitution in that it denies to said Foster-Founter Company, Inc. the equal protection of the law by compelling said Foster-Fountain Company, Inc. who is given the right by its charter, issued by the State of Louisiana, to catch, purchase or can shrimp from canning said shrimp at such point and in such locality as will be most profitable to the complainant, Foster-Fountain Company, Inc. requiring them to can said shrimp in the State of Louisiana at a loss, thereby denying them the right given all other citizens of the State of Louisiana to operate their business in such manner as to yield therefrom the most profit therein.

XIII

Complainants further show unto the Court that Sections 4 and 13 of said Act violate the Fourteenth Amendment to the Constitution of the United States, as well as Section 2, Article 1 of the Bill of Rights of the Constitution of the State of Louisiana, in that in the enforcement of the law persons residing in the State of Louisiana, who are engaged in the business of shipping out what is known as "raw shrimp" with the full knowledge of the officers of the law charged with the enforcement of the Act, are permitted to ship the whole shrimp out, and that the law is only intended to be and sought to be enforced against corporations like the complainants, operating a packing plant outside the State of Louisiana; that such individual residents of the State of Louisiana are knowingly permitted and allowed to evade the Act by filing an affidavit, known to be false by the officers charged with the enforcement of the Act, that the shrimp are caught beyond the three mile limit.

Complainants show that said Act not only violates the Constitution of the United States in the particulars hereinbefore set out, but violates the same as well as the Constitution of the State of Louisiana, in the administration and enforcement thereof.

XIV

Complainants show unto the Court that Louis A. Marks, Sheriff of the Parish of St. Bernard; Ernest Alberti, Sher-

[fol. 11] iff of the Parish of Plaquemine; Leander H. Perez, District Attorney for the Parishes of St. Bernard and Plaquemine; Percy Saint, Attorney General of the State of Louisiana; Valentine K. Irion, Commissioner of Conservation of the State of Louisiana; E. J. Haydel, Fred Schouest and L. R. Cabriac, defendants, are all citizens and residents of the State of Louisiana, are charged under the laws of the State of Louisiana with the duty of the enforcement of said Act; that all of said defendants reside within the jurisdiction of this Court, in the Eastern District of the State of Louisiana; that the complainants hereto are ready, willing, able and anxious to proceed with the performance of said contract, but if they shall so proceed the defendants hereinbefore named, who are the officers of the State of Louisiana charged with the enforcement of said Act, will promptly, under the provisions of said Act, interfere therewith by having them, their officers, agents and servants, arrested, and by confiscating their vessels and equipment.

Complainants allege, therefore, that they are prevented from the carrying out of said contract in interstate commerce and that, therefore, immediate and irreparable loss and damage will result to them, and each of them by reason of the unlawful acts and conduct of the defendants, who are proceeding to act, and who will act, under and by virtue of the terms of the Act of the Legislature of the State of Louisiana hereinbefore set out.

XV

Complainants show unto the Court that while they allege and aver that the licenses and taxes imposed in said act, in Sections 10, 12, 14, 15 and 16, are unconstitutional, and in violation of the Commerce Clause of the Constitution of the United States, the Fourteenth Amendment to the Constitution of the United States, and Section 3 of the Bill of Rights of the State of Louisiana, for the reasons hereinbefore set out, they offer to pay all of such taxes and charges as a condition precedent to the removal of said shrimp, and in all things offer to do equity and allege and aver that the Foster-Fountain Company, Inc., will not catch or acquire any shrimp in the State of Louisiana, or attempt to trans-

port any from the State of Louisiana, except upon the payment of the taxes and charges provided for in said act.

XVI

The premises considered, complainants pray that this original bill of complaint, with the exhibits, be received and filed; that a temporary restraining order issue from this Court restraining the defendants from the enforcement of said Act, and from in any manner preventing or interfering with the execution of that certain contract between the complainants hereto, hereinbefore set out; and that they be restrained and enjoined from prosecuting either of the complainants, or their agents or servants, and that they be restrained from interfering with, seizing, or attempting to confiscate, or in any manner interfering with the Boats, property or equipment of the complain-ts, or either of them, used in the performance of said contract; and that an injunction will issue after a hearing before three judges, as provided by the Acts of Congress, enjoining and restraining the defendants, and each of them, as hereinbefore set out.

Complainants further pray that process issue requiring the defendants and each of them to plead, answer or demur to the allegations of this bill of complaint in accordance with the Equity Rules, but not under oath, which is expressly waived. And at the final hearing of the case the Court will render a permanent injunction, enjoining the defendants, and each of them, from the *d*nforcement of said Act; and that the rights of the complainants to make and execute said contract be fully determined and adjudicated, and that the defendants, and each of them, be perpetually enjoined from in any manner interfering therewith.

[fol. 12] If complainants have not prayed for the proper relief, the Court will grant such other, further and general relief as may be just and expedient in the premises.

(Signed) Foster Fountain Company. Sea Food Company, Inc., by W. H. Watkins and Rushing and Guice, Sols.

[fols. 13 & 14] *Duly sworn to by A. L. Hindenheimer and R. Hart Chinn. Jurat omitted in printing.*

[fol. 15] EXHIBIT TO COMPLAINT

STATE OF MISSISSIPPI,
County of Harrison:

This agreement made and entered into by and between the Sea Food Company, a Mississippi corporation, acting by A. R. Heidenheim, its general manager, secretary and treasurer and Foster Fountain Company, Inc. a Louisiana corporation, acting herein by R. H. Chinn, its president, on this — day of August, 1927, witnesseth:

That in consideration of the sum of One Dollar cash in hand paid by each party to the opposite party herein and of the mutual benefits and advantages running in favor of each party, it is agreed between said parties as follows:

That said Sea Food Company agrees to purchase and said Foster Fountain Company, Inc. agrees to sell to said Sea Food Company, 1,000 cases of 5 oz. shrimp, wet pack, each month during the season of 1927-1928, from such shrimp as are caught and packed by the Foster Fountain Company, Inc. in the waters of the State of Louisiana.

The purchase price of said shrimp shall be the prevailing market price at Biloxi, Miss. f. o. b. cars at the time of the delivery of said shrimp on board cars at Biloxi, Miss. and shall be payable when said shrimp are delivered on board cars consigned to the persons named by said Sea Food Company and the bill of lading therefor delivered to said Sea Food Company.

It is further agreed between the parties hereto that the said Sea Food Company agrees to buy from said Foster Fountain Company, Inc. and said Foster Fountain Company, Inc. agrees to sell to said Sea Food Company each week during the shrimp season of 1927-1928 100 barrels of raw shrimp from the catch of the Foster Fountain Company, Inc. or the purchase by said Foster Fountain Company, Inc. of shrimp in the State of Louisiana. These shrimp shall be delivered by the Foster Fountain Company, Inc. at the wharf of the Sea Food Company at Biloxi, Miss. and the Sea Food Company shall pay therefor the then prevailing market price for raw shrimp at Biloxi, Miss. plus the sum of ten per cent upon the purchase price of each shipment.

All labels for the above canned shrimp shall be furnished by the Sea Food Company.

It is understood between the parties hereto that the performance of this contract depends upon the ability of said Foster Fountain Company, Inc. to purchase or catch shrimp in Louisiana, that is, if no shrimp are caught during the season of 1927-1928 said season being a failure, then said Foster Fountain Company, Inc. shall not be required to make delivery as herein agreed upon.

Witness the signatures of all parties hereto at Biloxi, Miss. on this the 14th day of August, A. D. 1927.

Sea Food Company by A. R. Heidenheimer, Genl., Mgr., Secy. & Treas.

Foster Fountain Company, Inc. by R. Hart Chinn, President.

(Signed.) Witnesses: W. L. Guice, Hazel L. Burke.

[fol. 16] EXHIBIT TO COMPLAINT

Act No. 103 of the Louisiana Legislature of 1926

Protecting Salt Water Shrimp and Regulating the Salt Water Shrimp Industry

Summary

Section 1. Declaring State ownership of salt water shrimp, their hulls, and all parts thereof.

Section 2. Control of shrimp industry vested in the Department of Conservation.

Section 3. Defining inside and outside waters.

Section 4. Right to take, pack and dry salt water shrimp confined to resident persons and firms or corporations composed of residents of this State.

Section 5. Fixing close season for both inside and outside waters, and prohibiting having shrimp in possession for canning or drying within the State, irrespective of where caught.

Section 6. Fixing size limit of shrimp that may be taken from Louisiana waters, or had in possession if taken from waters not under the jurisdiction of the State.

Section 7. Giving Department authority to prohibit the using of trawls and seines over 10 fathoms in length, at any time in the inside waters of the State.

Section 8. Regulating size of mesh of seines, trawls and similar device.

Section 9. Illegal to offer for sale or have shrimp in possession for canning or drying within the State during the close season irrespective of where caught.

Section 10. Fixing license fees for using seines, trawls, etc., and providing penalties if licenses are not procured at time stated in the law.

[fol. 17] Section 11. Metal license tags to be provided free of cost with licenses for seines, trawls, etc.

Section 12. To levy severance tax on shrimp sold fresh, canned or dried within the State and provide penalties for non-payment.

Section 13. Declaring shells or hulls and heads valuable for fertilizer and prohibiting the exportation of shrimp from the State until after these have been removed. And requiring licenses to conserve same for fertilizer, and to make monthly reports herein provided for.

Section 14. Must make application for all licenses on forms provided for by the department. And required to arrange canning plant and drying platforms to conform with requirements of the State Board of Health.

Section 15. To levy fees for licenses under which to operate canning plants and shrimp drying platforms.

Section 16. To require resident shrimp freighting vessels to obtain a license.

Section 17. The Department required to provide patrol vessels for the enforcement of shrimp laws.

Section 18. Shall not affect other portions of this law, if any part is held to be invalid or unconstitutional.

Section 19. Regulating common carriers and providing penalties for violation of same.

Section 20. All collections through Court proceedings to be paid to school fund, except 10% to be paid to sheriff.

Section 21. Repealing clause, and extending privileges to canning factories located beyond the confines of the State to continue operations under licenses and laws, until June 15, 1927.

An Act

To declare all shrimp and parts thereof in the waters of the State to be the property of the State of Louisiana, and to provide the manner and extent of their reduction [fol. 18] to private ownership; to encourage, protect, conserve, regulate and develop the shrimp industry of the State of Louisiana; to provide penalties for the violations of the provisions of this act, and to repeal all laws in conflict herewith.

Section 1. Be it enacted by the Legislature of Louisiana, That all salt water shrimp existing in the waters of this State, and the hulls and all parts of said salt water shrimp shall be and are hereby declared to be the property of the State; until the title thereto shall be divested in the manner and form herein authorized and shall be under the exclusive control of the Department of Conservation of the State of Louisiana, until the right of private ownership shall vest therein as herein provided, and that no person, firm or corporation shall catch or have in their possession, living or dead, any salt water shrimp, or parts thereof, or purchase, sell or offer for sale, any such shrimp or parts thereof, after same have been caught except as otherwise permitted herein.

Section 2. That the control, on the part of the State of Louisiana of the shrimp industry shall be vested in the Department of Conservation of the State of Louisiana, which shall be required to enforce the provisions of the laws regulating said industry.

Section 3. That for the purpose of this Act, the waters of the State of Louisiana shall be divided into two (2) classes, to be known as inside waters and outside waters. The outside waters shall include the Gulf of Mexico within three (3) miles limit of the seashore. All other waters of the State within which the tide regularly rises and falls sall be classed as inside waters. In the inside waters shall be included Timbalier Bay, East Cote Blanche Bay, Atcha-

falaya Bay, West Barataria Bay, and all other bays and sounds found along the Louisiana Coast of the Gulf of Mexico.

Section 4. That the right to take salt water shrimp from the waters of this State and the right to can, pack and [fol. 19] dry the said shrimp when caught are hereby granted to any resident of this State, to any firm or association composed of residents of this State, or to any corporation domiciled in or organized under the laws of this State, operating a canning or packing factory or drying platform in this State. These rights shall be confined to such persons and corporations and are granted subject to the further conditions hereinafter stipulated. It shall be unlawful for any person not a resident of this State, or for any firm or association not composed of residents of this State, or for any corporation not domiciled in or incorporated under the laws of this State, to catch salt water shrimp in the waters of this State, or to can, pack or dry in any factory or on any platform in this State, any salt water shrimp caught from the waters of this State; and any person, firm or corporation so violating the provisions of this Section shall be liable to the penalties hereinafter provided.

Section 5. That it shall be unlawful for any person, firm or corporation to seine, trawl for, catch or attempt to catch or have in possession, any salt water shrimp from beyond the waters of the State for use or sale in this State, or from the outside waters of the State, as heretofore described, or from the inside waters of the State, as heretofore described, between the fifteenth day of June, and the fifteenth day of August, both dates inclusive, of any one year. It shall be unlwaful for any person, firm or corporation, otherwise authorized to operate under this act, to seine, trawl for, catch or attempt to catch, any salt water shrimp from the inside waters of this State between the first day of December and the fifteenth day of March, both dates included, and between the fifteenth day of June and the fifteenth day of August, both dates included of any year. Any person, firm or corporation, otherwise authorized under this Act may seine, trawl for, catch or attempt to catch any salt water shrimp from the outside waters of

this State, as hereinbefore described, at any time, except between June fifteenth and August fifteenth of each year, [fol. 20] both dates included, and except between February first and March fifteenth of each year, both dates included. The remaining portions of the year shall be known as the open season and salt water shrimp may then be taken by any person, firm or corporation, herein otherwise authorized to do so, from any of the waters of the State and may be had in possession for sale, drying or canning, subject to the conditions stipulated in this Act. Salt water shrimp, legally taken and dried or canned within this State and upon which the license and severance taxes have been paid as required by this Act, may be bought and sold at any time. Salt water shrimp in their fresh state, legally caught during the open season, may be had in possession for drying or canning, or sale in their fresh state, for five (5) days after the end of the open season. It is not intended by the provisions of this Act to interfere with the fishermen securing shrimp for bait; or for home consumption or the local markets, in their fresh state, provided they are taken from the outside waters of the State; and provided further that shrimp for bait may be secured from either the inside or outside waters of the State at any time.

Section 6. That it shall be unlawful to take from the waters of the State for the purpose of sale in their fresh state, or for drying or canning, any salt water shrimp that measure less than four (4") inches in length from the tip of the spear or rostrum to the end of the tail fin, and it shall be unlwaful to have any salt water shrimp in possession in this State, measuring less than four (4") inches in length irrespective as to where they may have been caught. This restriction as to size for salt water shrimp shall not apply to those taken for bait, nor shall it apply to "sea bobs" nor "six barbes" taken during the open seasons from the outside waters for drying purposes.

Section 7. That it shall be unlawful for any person, firm [fol. 21] or corporation, otherwise authorized to catch salt water shrimp by using a seine which exceeds ten (10) fathoms in length, a trawl or any other device, except by authority of a license issued by the Department of Con-

servation, authorizing the use of such seines, trawls or other devices. The Department of Conservation is authorized to prohibit the using of trawls or seines in any of the inside waters of the State at any time, when in the opinion of the Department of Conservation, the using of such trawls or seines in the inside waters of the State for the taking of salt water shrimp is detrimental to the interests of the State and to the shrimp industry, provided that such action shall only be taken after a hearing on the part of the Department of Conservation of the parties interested or affected, and reserving to the parties affected a right to appeal from the ruling of the Department of Conservation to any court of competent jurisdiction for a review of the issue presented. Seines of ten (10) fathoms or less in length may be used in the taking of salt water shrimp from the waters of the State without permission or license from the Department of Conservation.

Section 8. That it shall be unlawful, in catching or taking salt water shrimp from the waters of this State, to use any seine, trawl or other device, with a mesh less than three-quarters of an inch (¾") square.

Section 9. That it shall be unlawful for any person, firm or corporation to sell, exchange, expose, offer for sale or exchange, or have in possession for sale, packing, canning, or drying, either for himself or others, any salt water shrimp that have been caught from any of the waters of the State during the close seasons herein provided for, except as otherwise provided herein. The prohibition against possession for the purpose aforesaid shall apply to all shrimp taken from beyond the waters of the State of Louisiana.

[fol. 22] Section 10. That it shall be unlawful to set or draw, or attempt to set or draw any seine of ten (10) fathoms or upwards in length, or any trawl, or any other device, in any waters of this State for the purpose of catching or attempting to catch any salt water shrimp, unless an annual license fee has been paid thereon to the Department of Conservation at the rate hereafter noted, and the said license evidencing said payment is to be at all times had in possession to be shown on demand of any duly authorized officer. Said licenses shall be issued by the

Department of Conservation, and the proceeds thereof shall be turned into the State Treasury and placed to the credit of the Department of Conservation. The license required for the operation of seines shall be graded as follows: For all seines over ten (10) fathoms in length up to and including seventy-five (75) fathoms in length the lincense fee shall be Five Dollars ($5.00), on all seines exceeding seventy-five (75) fathoms in length up to and including three hundred (300) fathoms in length, the license fee shall be Fifteen Dollars ($15.00) and on all seines exceeding three hundred (300) fathoms in length the license fee shall be Twenty Dollars ($20.00), which said sum shall be paid by the owner or operator of said seine. For every trawl operated for catching shrimp the annual license fee shall be Ten Dollars ($10.00). Should any salt water fish or crustaceans, other than shrimp happen to be caught in said seine or trawl drawn for the purpose of catching salt water shrimp, no separate or additional license shall be exacted. If devices other than seines or trawls are used, the Department of Conservation is authorized to fix annual licenses therefor on a reasonable basis as experience and practice may develop, and in accord with the licenses hereinabove fixed for seines and trawls.

These license fees shall be due on the date fixed by the Department of Conservation and those operating in the [fol. 23] shrimp industry shall secure the required licenses in advance. In the event of a failure on the part of any person, firm, or corporation to secure the required license a penalty of ten percent (10%) of the license shall be charged by the Department of Conservation for any delay not exceeding thirty (30) days in obtaining said license, a penalty of twenty-five percent (25%) shall similarly be charged for any delay exceeding thirty (30) days and not exceeding sixty (60) days and a penalty of fifty percent (50%) of said license shall be similarly charged for any delay exceeding sixty (60) days but not exceeding one hundred twenty (120) days in the obtaining of said license. In the case of any delay exceeding one hundred twenty (120) days in obtaining of said license, when it should have been properly obtained, the Department of Conservation is vested with authority to refuse to issue said license for the balance of the said season.

Section 11. That all seines or ten (10) fathoms and upwards in length, all trawls, and all other devices set or used for the purpose of catching salt water shrimp in or upon any of the waters of this State must have the official license tag attached thereto, or in the possession of the operator, said tag to be of metal and to be issued by the Department of Conservation and to be furnished without extra charge, upon the payment of the license fee at the rates noted herein.

Section 12. That there be and are hereby levied severance taxes on all salt water shrimp taken from the waters of this State for drying or canning purposes, or for sale in their fresh state, within the State of Louisiana, as follows: A severance tax of ten cents (10c) per barrel, said barrel to contain two hundred ten pounds (210) of shrimp, is hereby levied on all salt water shrimp taken for canning [fol. 24] purposes or for use or sale in their fresh state, and a severance tax of thirty-five cents (35c) per hundred pounds (100) is hereby levied on all salt water shrimp taken for drying purposes, said severance tax on dried shrimp to be computed and collected on said shrimp after having been dried. The taxes shall be paid on delivery of shrimp sold for use in their fresh state by the catcher, or dealer. The tax on shrimp canned or dried shall be paid by the canner, dryer, or dealer at the end of each month, on or before the tenth of the following month. A statement must be made under oath on blanks furnished by the Department of Conservation, and must accompany each payment. These taxes, when collected by the Department of Conservation, shall be deposited to the credit of the Department of Conservation with the State Treasurer, and shall be used by the Department of Conservation for the purpose of carrying the provisions of this law into effect, in protecting and developing the shrimp industry, and in the general work of the Department of Conservation. A barrel or any part thereof, which has paid this tax shall not again pay the tax, and the monthly official receipts of the Department of Conservation shall be evidence of the payment of the severance tax on all shrimp sold for use in their fresh state, and on all shrimp canned during said mnth. The official receipts of the Department of Conservation, when in the hands of the dryer or dealer, shall be evidence of the

payment of the tax on all shrimp dried or handled by him for said month.

The person, firm or corporation paying the original tax on dried shrimp must furnish a certificate of sale with each and every portion of dried shrimp disposed of from any lot on which the tax has been paid, or will be paid by him or them, on blanks furnished by the Department of Conservation. Said certificate shall be made in duplicate, and a copy of each immediately mailed to the office of the Department of Conservation in New Orleans. The Department of Conservation is authorized to seize any shrimp in [fol. 25] the hands of canners or dealers, or their assignees, vendees, or consignees, upon which the tax has not been paid after demand for payment by the Department of Conservation, and to sell such shrimp for the purpose of realizing the payment of the tax, and the surplus from the proceeds of sale, after deducting the tax and all costs and charges, shall be paid to the owner of the shrimp seized. Whenever any willful attempt is made to defraud the Department of Conservation out of the payment of any tax herein imposed any shrimp involved in such willful fraudulent tax evasion shall be forfeited to the State as represented by the Department of Conservation. These severance taxes shall be payable to the Department of Conservation within a period of thirty (30) days from the end of the month without any penalty. Upon a failure of any person, firm or corporation to pay said severance taxes within said thirty (30) day period, a penalty of ten percent (10%) per month calculated upon the severance tax due, shall be levied and collected by the Department of Conservation in addition to the severance tax upon all in default in the matter of the payment thereof. The levy in payment of a servance tax as herein provided shall not be construed as a grant to the person, firm or corporation against whom the same is levied or by whom the same is paid or any right of property or ownership in the shrimp or parts thereof so severed or the right to transport the hull or shell and head of such shrimp outside of the State of Louisiana.

Section 13. All salt water shrimp and the shells or hulls and heads of all salt water shrimp are hereby declared to be the property of the State, and the shells or hulls and heads to be valuable for use as a natural resource of the

State as a fertilizer in the State; and it shall therefore and hereafter be unlawful to export from the State of Louisiana any salt water shrimp from which the shell or hull and head shall not have been removed.

In order that all of the inhabitants if the State of Louisi- [fol. 26] ana may enjoy the State's natural food product, it shall be lawful to ship unshelled shrimp from any point in the State of Louisiana to any other point in the State of Louisiana for edible consumption, subject to such regulations and restrictions as may be imposed by the Department of Conservation. Any person, firm or corporation of this State who shall lawfully take any shrimp from any of the waters of the State, or lawfully acquire the same, shall have a qualified interest or property in the shrimp so taken or acquired in the shells, which qualified interest may be sold or transferred to any other person, firm or corporation within the limits of the State; and after the edible portions of the abdomen popularly called tail meat of said shrimp shall have been removed from the shell, within the State of Louisiana, such lawful taker or possessor, his heirs or assigns, as the case may be, shall be vested with all of the rights and property of the State in and to said shrimp tailmeat and shall have the right to sell such shrimp tail meat or ship the same beyong the limit of the State, without restriction or reservation.

It shall be the duty of all licensees operating under the Department of Conservation in the shrimp industry in this State to conserve for fertilizer purposes all shells or hulls and heads of salt water shrimp and to report monthly, on blanks to be furnished by the Department of Conservation, the quantity thereof on hand, to the Department of Conservation. It shall be unlawful to export from the State of Louisiana any raw shells or hulls and heads of salt water shrimp as they are required to be manufactured into fertilizer or used for an element in chicken feed. When the shrimp hulls or shells and heads shall have been conserved for the purpose herein stated, the right of property therein theretofore existing in the State shall pass to the lawful taker or the possessor thereof. Any person, firm or cor- [fol. 27] poration violating the provisions of this section shall be liable to the penalties hereinafter imposed.

Section 14. That every license issued by the Department of Conservation to any resident person, firm or corporation,

under the laws of the State authorizing the taking of salt water shrimp from the waters of the State for sale in their fresh state, or for canning, packing or drying purposes, shall be issued only upon a written application in which it shall be stipulated, as a matter of contract, that the applicant will faithfully and fully comply with the laws of this State and the rules and regulations of the Department of Conservation, and will promptly pay the severance taxes levied on salt water shrimp taken from the waters of the State for canning, packing or drying in this waters of the State for canning, packing or drying in this State or for sale in their fresh state in this State. The Department of Conservation shall have the right to refuse to grant a license to any canning, packing or drying plant engaged in the shrimp industry that does not fulfill the requirements of the specifications of the Board of Health of the State of Louisiana adopted for sanitary regulation, the right of appeal being reserve to such applicant to the court having jurisdiction thereof to review the findings of the Department of Conservation on the subject.

Section 15. That it shall be unlawful for any person, firm or corporation to engage in the business of canning, packing or drying shrimp at any point or place in the State of Louisiana for commercial purposes without having first received from the Department of Conservation an annual license so to do, and the Department of Conservation is hereby authorized and required to issue such licenses and to charge for said license and to collect therefor the sum of Twenty-Five Dollars ($25.00) for each factory and Fifteen Dollars ($15.00) for each drying platform used for the drying of shrimp, either in whole or in part not actually caught by the owner thereof, so licensed. These [fol. 28] licenses shall be issued and renewed annually and shall be issued on forms to be provided by the Department of Conservation. When such licenses are so secured such persons, firms or corporations may then lawfully engage in said business subject to the provisions of this Act. The proceeds of these licenses, when collected by the Department of Conservation, shall be deposited to the credit of the Department of Conservation with the State Treasurer and shall be used by the Department of Conservation for the purpose heretofore set forth.

Section 16. That all freight and ice boats carrying shrimp taken from Louisiana waters for sale in their fresh state, or for canning, packing and drying in Louisiana, must first obtain from the Department of Conservation of Louisiana a license at the rate of Five Dollars ($5.00) per annum, and the said annual license evidencing said payment shall be at all times on board of said vessel and shall be shown on demand of any duly authorized officer. All such vessels shall keep in writing a manifest of their cargo, a copy of which shall be filed on each trip with the canning factory or drying platform or dealer to which delivery of the cargo shall be made and such manifest shall at all times be open to the inspection of any duly authorized agent of the Department of Conservation. Said licenses shall be issued by the Department of Conservation and the proceeds thereof shall be turned into the State Treasury and placed to the credit of the Department of Conservation.

Section 17. That the Department of Conservation of the State of Louisiana is hereby required to maintain such patrol vessels in the waters of the State of Louisiana, where salt water shrimp are taken, as will insure the carrying out of the enforcement of the provisions of this act. For the purpose of carrying into effect the provisions of this Act and the rules and regulations of the Department of Conservation of the State of Louisiana, inspectors, employees of the Commission, Captain and members of the crews of [fol. 29] all vessels, in the service of the Commission are hereby constituted peace officers with the power to arrest on view, without warrant, any one violating the provisions of the law, and it shall be the duty of all Captains and crews to lend their assistance and the assistance of their vessels to any employee of the Commission in making arrests. The vessels used in patrolling the waters of the State shall be suitably armed and the Conservation Commissioner shall have the power to appoint conservation agents with the authority to carry arms concealed while in the performance of their duty, and who shall have power under the law to enforce the provisions of this Act for the protection of salt water shrimp as a natural resource of the State.

Section 18. To the end that a valuable food product may be preserved for the benefit of the people of the State of

Louisiana the provisions of this Act shall be broadly construed to conserve this end. In the event that any Section or portion of this Act shall be held for any reason to be invalid or unconstitutional the remaining portions of this Act shall continue in full force and effect.

Section 19. That any person, firm or corporation or common carrier, their agents and officers violating any provisions of this Act, where a punishment has not been otherwise provided, shall be guilty of a misdemeanor and shall on conviction thereof be fined not less than Twenty-Five Dollars ($25.00) or not more than One Hundred Dollars ($100.00) for the first offense, nor less than One Hundred Dollars ($100.00) nor more than Two Hundred Dollars ($200.00) for the second offense and for the third offense the fine shall not be less than One Hundred Dollars ($100.00) nor more than Two Hundred Dollars ($200.00) and in addition the license under which operations are being conducted shall be revoked. For each offense the courts may impose a sentence in the parish jail for not less than five days nor more than thirty days or may impose [fol. 30] both fine and imprisonment at the discretion of the court for each offense; and in addition thereto the boats, seines or other devices used in such violations may be confiscated by order of the Court.

Vessels, their tackle and appar-tus, used in illegal taking of salt water shrimp from the waters of the State, or used in the illegal transportation of salt water shrimp taken from the waters of this State, shall be seized and taken into possession by the officers or inspectors of the Department of Conservation charged with the enforcement of the Conservation laws, shall be delivered to the Sheriff of the Parish wherein the violation of the law occurred, the Sheriff being authorized to permit of the release of said vessel from seizure upon the owner thereof furnishing a bond satisfactory to the Judge of the District Court having jurisdiction, providing for the return of such vessel and its apparel and apparatus to abide the judgment of the Court. Such vessel shall be liable to forfeiture upon proceedings being instituted to that end by the District Attorney having jurisdiction, and the Judge of the District Court having jurisdiction shall be authorized to decree the forfeiture of such

vessel shall be sold at public auction by the Sheriff having jurisdiction and the proceeds of sale of said vessel, its apparel and apparatus, less the cost of the seizure, keeping and sale, shall be paid into the State Treasury to the credit of the Department of Conservation. Any person, firm or corporation found guilty by the Court of violating the provisions of this law prohibiting the exportation of salt water shrimp from the State, unless and until the hull or shell and head shall have been previously removed therefrom within this State shall be liable to a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00), or to imprisonment of not less than six months (6) nor more than one (1) year and shall be liable to both fine and imprisonment in the discretion of the Court. [fol. 31] Section 20. That all fines collected through the Courts under the provision of this Act shall be paid to the treasurer of the School Fund of the parish for the use of the public schools of the parish in which the violation occurred, and the Sheriff shall receive ten per cent (10%) for the Collection of such fines turned over to the said treasurer.

Section 21. That all laws or parts of laws contrary to or in conflict with the provisions of this Act be and the same are hereby repealed, provided that, in order to permit canning factories located beyond the limits of the State which have heretofore been permitted to take salt water shrimp out of the State for canning purposes to adjust their business to the conditions imposed by this act, the provisions of this Act which require all salt water shrimp to be peeled or removed from their hull or shell in Louisiana and the shrimp head and hull or shell to be left in Louisiana shall not go into effect until June 15th, 1927, as to those shrimp canners who shall have obtained from the Department of Conservation permits permitting such canneries until June 15th, 1927, to remove from the state salt water shrimp unpeeled for canning in factories located beyond the limits of the State, conditioned upon the right being reserved to the Department of Conservation of Louisiana to revoke any such permit upon the failure to be determined as a matter of fact, after hearing, by the Department of Conservation of Louisiana, that such permittee or licensee has f-iled to

comply with the conditions imposed in such permit, and the Commissioner of Conservation shall be authorized to issue permits in accordance herewith, which permits shall expire June 15th, 1927.

It is the intention and sense of this exception that the canning factories located out of the State which have hereto-
[fol. 32] fore gotten their salt water shrimp from Louisiana shall be permitted to continue to do so under former conditions, until June 15th, 1927, except that the closed seasons herein established shall become effective upon the due promulgation of this Act.

[fol. 33] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING TEMPORARY RESTRAINING ORDER.—Filed September 7, 1927

This day this cause came on to be heard on the application of the complainants for a temporary restraining order and it appearing to the Court from the allegations of the original bill of complaint, duly verified, and proof offered before the Court that the complainants will sustain irreparable injury and damage unless the restraining order prayed for be issued, and it appearing to the Court that such restraining order should be issued, it is ordered, adjudged and decreed that the clerk of this court issue a temporary restraining order, commanding and requiring the defendants, and each of them, their agents, servants and attorneys, to desist from in any manner preventing or interfering with the execution of that certain contract entered into between the complainants in said cause, and the said defendants and each of them, their agents, servants and attorneys, be and are hereby restrained and commanded to desist from the enforcement of Act No. 103 passed by the Legislature of the State of La. approved July 8th, 1926, in so far as the same renders illegal the contract between the complainants made exhibit to the original bill of complaint in this cause; and that the said defendants, and each of them, their agents and servants, are restrained from, and

commanded to desist from prosecuting the complainants, or either of them, their agents, and servants, for a violation of Section 4 and Section 13 of said Act.

It is further ordered, adjudged and decreed by the court that a three Judge court be composed of Hon. Rufus E. Foster, Circuit Judge and Hon. L. H. Burns and E. R. Holmes, District Judges, organized to be held on or before ten days from this date for the purpose of hearing and determining complainants' application for a permanent injunction pending the final hearing of this cause.

Ordered, Adjudged and decreed this the 6th day of September, 1927.

(Signed) E. R. Holmes, District Judge.

[fol. 34] IN UNITED STATES DISTRICT COURT

MARSHAL'S RETURN ON COPY OF TEMPORARY RESTRAINING ORDER—Filed September 16, 1927

Received by U. S. Marshal, New Orleans, La.

Sept. 7/27. And on the same day, month and year, I served a true copy hereof on Valentine K. Irion, by handing the same to him in person in New Orleans, La. Percy Saint, Atty. Gen. State of La. by leaving the same in the hands of E. R. Schonwalter, Asst. Atty. Gen. in his office in N. O. La., and on the 8th day of the same month and year I served copy hereof on Louis A. Mereaux, Sheriff of St. Bernard Parish, La., by handing the same to him in person in St. Bernard Parish, La., and on the 12th day of same month and year I served copy hereof on Ernest Alberti, Sheriff of Plaquemine Parish, La., by handing same to his Chief Deputy, W. L. McCormick, in person, in the office of the sheriff at Pointe-a-la-Hache, Plaquemine Parish, Louisiana, and on the 13th day of the same month and year I served copy hereof on E. J. Haydel, Fred Schouest and L. R. Cabriac by handing the same to Edward Burke, Port Capt. for the Department of Conservation in person in New Orleans, La., and on the 15th day of the same month and year I served copy hereof on Leander H. Perez, District Atty. for the Parishes of St.

Bernard and Plaquemines, State of Louisiana, by handing the same to him in person in New Orleans, La.

(Signed) Victor Lo.sel, U. S. Marshal, by E. M. Kinler, Dy.

[fol. 35] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR PERMANENT INJUNCTION—Filed Sept. 9, 1927

Comes Foster Fountain Company Inc. and the Seafood Company, Complainants, and move the court to grant a permanent injunction pending the hearing and determination of this cause on the original bill of complaint, demurrer, restraining order and proof offered in support thereof.

(Signed) Rushing & Guice, Watkins, Watkins & Eager, Attorneys for Complainants.

[fol. 36] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER CONTINUING HEARING APPLICATION PERMANENT INJUNCTION—Filed September 9, 1927

It appearing to the Court that the Honorable Rufus E. Foster and Louis H. Burns are absent from the State of La. and the Fifth Circuit and will not return within ten days from this date, it is ordered, adjudged and decreed that the application of the complainants for a permanent injunction be and is hereby continued from day to day, that the temporary restraining order, heretofore issued in said cause remain in force, pending the hearing of said application.

That a definite date for the hearing of said application will be fixed to suit the convenience of Court and Counsel, due notice of which will be given not to be tried later than October 12th, 1927 unless otherwise ordered by the Court.

Ordered adjudged and decreed, this the 8th day of September, 1927.

(Signed) E. R. Holmes, District Judge.

[fol. 37] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER CONTINUING APPLICATION FOR INJUNCTION TO FINAL HEARING—Filed September 30, 1927

Complainants and defendants agreeing thereto, it is ordered, adjudged and decreed that the application of the complainants for a temporary injunction pending final hearing of this cause be and is hereby passed and continued to the hearing and determination of this cause on the merits, the same to be heard, tried and determined by the Court of three Judges heretofore organized, composed of Rufus E. Foster, E. R. Holmes, and Louis H. Burns, District Judges.

It is ordered, adjudged and decreed that the defendants have Thirty days from this date within which to file answer or other pleas to the original bill of complaint, and that the temporary restraining order heretofore issued be and remain in force until the trial and determination of said cause on the merits.

Ordered, adjudged and decreed this, the 28th day of September, 1927.

(Signed) E. R. Holmes, District Judge.

The foregoing order is approved.

(Signed) Percy Saint, Atty. General, by Michael M. Irwin, Asst. to Atty. Gen., Attorneys for Complainants. W. H. Watkins, W. L. Guice, Lemle, Moreno & Lemle, Attorneys for Defendants.

[fol. 38] IN UNITED STATES DISTRICT COURT

[Title omitted]

PLEA OF ESTOPPEL

Now into this Honorable Court, through undersigned counsel, come Louis A. Meraux, Sheriff of the Parish of St. Bernard; Ernest Alberti, Sheriff of the Parish of Plaquemines; Leander H. Perez, District Attorney for the Parishes of St. Bernard and Plaquemines; Percy Saint, Attorney General of the State of Louisiana; Valentine K.

Irion, Commissioner of Conservation of the State of Louisiana; E. J. Haydel, Fred Schouest and L. R. Cabriac, made defendants in the above numbered and entitled cause, and aver as follows:

That plaintiffs herein are estopped from setting up the illegality and constitutionality of Act 103 of the Legislature of Louisiana of the year 1926, for the reason that said Act in its now form was agreed to by individuals duly authorized to act on behalf of various Mississippi packing interests, among whom are complainants; that said Act in its now form was passed as a compromise in order to permit Mississippi interests to acquire factory sites in Louisiana as provided in aforesaid Act; that parties representing the Mississippi packing interests having participated in discussions during the preparation and drafting of said Act, actually contributed to its final passage in its new form; that having agreed to it in the form in which it was passed by the Legislature of the State of Louisiana, and having gotten the benefit of the one year's delay for which they asked, complainants are estopped, as their contention is without equity.

[fol. 39] That of the fact that plaintiffs herein have applied for and have received licenses since the passage and adoption of Act 103 of 1926 for the taking of salt — shrimp from the waters of Louisiana, which licenses and permits constitute by its very terms a contract between plaintiffs and the State of Louisiana, and they are therefore estopped from contesting any section or sections of the aforesaid Act, as to its constitutionality.

Wherefore, your movers pray that this plea of estoppel be maintained and plaintiffs' suit be dismissed at their cost. Movers further pray for all other orders and decrees necessary in the premises; and for all general and equitable relief.

Percy Saint (Signed) Attorney General of Louisiana; Peyton R. Sandoz (Signed) Assistant Attorney General.

I hereby certify that the above and foregoing pleading to the jurisdiction of the Court, filed in behalf of the defendants herein, is filed in good faith and not merely for the purpose of delay.

Peyton R. Sandoz (Signed).

[fol. 40] AFFIDAVIT OF PERCY VIOSCA, JR.

STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, personally came and appeared Percy Viosca, Jr., to me well and personally known, who being duly sworn by me did depose and say:

That he is the Director of the Fisheries Division of the Department of Conservation of the State of Louisiana, and has held this position since April 2, 1927, prior to which time, that is to say, from July 18, 1918, to April 2, 1927, he was employed as Biologist for the Department of Conservation of the State of Louisiana. That his employment has required him to make a scientific study of the habits and migrations of Louisiana shrimp, particularly of salt water shrimp; that during his employment he made several reports pertaining to the edible shrimp of Louisiana and that a summary of his studies has been published in the Fourth Biennial Report of the Department of Conservation of Louisiana on or about April 1, 1920.

Affiant avers that his opinions as to the migration of shrimp are accepted at face value by scientific men throughout the United States and have been mentioned in publications under his authorship, which have appeared in various scientific journals. That part of the Louisiana Shrimp Law officially designated as Act 103 of 1926, which pertains to the conservation of living shrimp in Louisiana waters is based upon scientific study made by the affiant.

Affiant ascribes the abundance of common salt water shrimp in Louisiana to two factors: (1) Mud bottoms of alluvial origin, which is their favorite habitat and in which they can conceal themselves from their enemies by burying themselves, since they do not live amongst vegetation as do most other species of shrimp; and (2) to the abundance of the chief food of immature shrimp, which consists mainly [fol. 41] of roots, stems and leaves of salt marsh grasses, which are constantly washed into the lakes and bays of our salt marshy country by the waves and by receding tides.

The chief purpose of the present Louisiana Shrimp Law is to conserve these immature shrimp until they reach the marketable size, as large quantities of them are sometimes

destroyed illegally before they reach the size of economic value.

Affiant avers that his scientific study of the life and habitat of Louisiana shrimp has been persistent and with the view of ascertaining all the information of value in regard to that important natural resource of the State of Louisiana.

Affiant avers that some of his knowledge has been gained by hundreds of observations and accurate measurements taken at all seasons of the year by seines, trawls, tow-nets, cast-nets, dredges, etc., which date he has prepared and condensed in the form published in the Biennial Report hereinabove referred to.

Affiant avers that he has confirmed his information as to the kind and character of food upon which these shrimp thrive by miscroscopic examinations; affiant also avers that his knowledge of adult and immature shrimp, also at different ages and sizes, has also been arrived at by a thorough microscopic study of the internal organs of both adult and immature shrimp.

Affiant avers that he has specialized in Biology by virtue of his education in that branch of science at Tulane University and by reason of special courses which he has taken to enhance his knowledge on the subject.

Affiant avers that as the head of the Fisheries Division of the Conservation Department he is prepared to state of his own knowledge that there is no evidence in possession of the Department of Conservation coming through its agents, or otherwise, which indicates that the shipments of shrimp procured from the waters of the State of Louisiana have been shipped outside of the State without first removing the heads and hulls therefrom and especially since Act 103 of 1926 became effective.

Affiant avers that the aforesaid Act 103 of 1926 does not relate to the head and hulls of shrimp caught outside of the waters of the State of Louisiana, nor beyond the [fol. 42] three mile limit in the Gulf of Mexico; that the Conservation Department has no jurisdiction over shrimp caught in the Gulf of Mexico outside of the three mile limit, and such shrimp as may have been shipped from the State of Louisiana since the adoption of Act 103 of 1926, have, so far as affiant knows, and so far as the records of the

Department of Conservation show, *have* been only of such shrimp as have been caught beyond the limits of the State of Louisiana and these are not the character of shrimp contemplated by the provisions of the aforesaid Act 103 of 1926.

Affiant knows of his own knowledge that large quantities of shrimp are caught in the waters outside of the State of Louisiana at all seasons of the year, but that these shrimp are not within the jurisdiction of the Conservation Department.

Affiant knows of his own personal knowledge that there have been no salt water shrimp caught in the waters of Louisiana since the adoption of the aforesaid Act 103 of 1926 and shipped beyond the limits of the State of Louisiana, unless they have been so caught and so shipped in a surrepti-ious and illegal manner, despite the vigilant activity of the agents of the Conservation Department to detect all violators of the law; that no such ssrimp is being caught and shipped to the knowledge of anyone connected with the Fisheries Division of the Department of Conservation, nor have any such shipments been permitted on appeals, affidavits or otherwise, to the knowledge of the Fisheries Division of the Department of Conservation of Louisiana.

Affiant avers that shrimp factories in Louisiana are located both on the east and west of the Mississippi River and affiant attaches hereto a list of the licensed canneries and drying platforms located in the State of Louisiana, according to the records of the Department of Conservation, which aforesaid list is attached hereto and made a part hereof, and is marked Exhibit "A".

Affiant avers that there are no shrimp factories at Homer, Louisiana, but that there are such factories located at Houma, Terrebonne Parish, Louisiana.

[fol. 43] Affiant avers that there is a difference in the shape and color of the shrimp caught in inland lakes and bays of Louisiana and those caught in the open Gulf, with the exception that in periods of very low water or excessively rainy seasons, immature shrimp of the color usually found in inside waters are sometimes carried out to sea and will occasionally be found to be mixed with adult sea shrimp of different appearance.

Affiant avers that there is no record of adult salt water shrimp ever being taken in inside waters of the State of Louisiana.

Affiant avers that the Complainant, Foster-Fountain Company, Inc., while alleging in its Bill of Complaint that salt water shrimp have been caught in Louisiana waters and shipped with hulls and heads on beyond the limits of the State, that no evidence of such shipments have been tendered to the Department of Conservation of Louisiana; but, on the contrary, all certificates relating to the shipment of shrimp required to be filed under oath with the Conservation Department of Louisiana have indicated and evidenced that all such shipments of shrimp have been made only after the shrimp have been picked, said certificates being identical in form with that which the Complainant, Foster-Fountain Company, Inc., has filed with the Conservation Department of Louisiana, as of October 21, 1927, the original of which is hereto annexed and made a part hereof and is marked Exhibit "B".

Affiant avers that permits are issued by the Department of Conservation to persons, firms and corporations desiring to catch salt water shrimp within the limits of the State of Louisiana and that said permit is a contract between the applicant and the State of Louisiana by which the applicant agrees that he shall comply with every provision of law, particularly Act 103 of 1926 relating to the catching, drying and packing of shrimp within the State of Louisiana, and that the Complainant, Foster-Fountain Co., Inc., has ever since the adoption of said Act 103 of 1926 filed the required applications for permission to take salt water shrimp from Louisiana waters, which aforesaid applications and permits have contained the contractural obligation referred to, the last applications and permits of the aforesaid Foster-Fountain Co., Inc., having been filed [fol. 44] and issued as of date September 1, 1927, as evidenced by the aforesaid application of the Foster-Fountain Co., Inc. hereto attached and made a part hereof and marked Exhibits "S."

Affiant further avers that identical applications and permits by the Complainant, Sea Food Company, were made by said Sea Food Company and granted by the Department of Conservation as of date September 12, 1927, as per

original application hereto annexed and made a part hereof and marked Exhibit "E".

Affiant avers that a similar application was made by Complainant, Foster-Fountain Co., Inc., to operate boats solely within Louisiana waters for the transportation of shrimp within the limits of Louisiana and not beyond, as evidenced by the application of the said Foster-Fountain Company, Inc., dated September 1st, 1927, a certified copy of which is hereto annexed and made a part hereof, marked Exhibits "G" and "H".

Affiant avers that he makes the foregoing declarations solely of his own knowledge and not from hearsay.

(Signed) Percy Viosca, Jr.

Sworn to and subscribed before me at the City of New Orleans, State of Louisiana, on this 27th, day of the month of October, 1927.

(Signed) H. J. Stansbury, Notary Public, Dy. Clerk Court of Appeal Parish of Orleans.

[fol. 45]

EXHIBIT "A" TO AFFIDAVIT

Resident Salt Water Shrimp Canning & Packing License

1927. $25.00. 1928.

No.	Name	Address	Date	Factory located
198	Berengher Canning Co.	Berengher, La.	8-1-27	Berengher.
199	Biloxi Canning Company.	Lockport, La.	5	Lockport.
200	Martin Fountain Co. Inc.	Lafitte, La.	6	Lafitte.
201	Dunbar Dukate Co. Inc.	Myrtle Grove, La.	12	Myrtle Grove.
202	" " " "	Violet, La.	12	Violet.
203	" " " "	Lafitte (Fisher Plant).	12	Lafitte.
204	" " " "	Westwego, La.	12	Westwego.
205	Foster Fountain Co. Inc.	New Orleans, La.	12	Pearl River.
206	Foster Fountain Co. Inc	New Orleans, La.	12	Golden Meadow.
207	Timbalier Bay Packing Co.	Golden Meadow.	12	Golden Meadow.
208	Robinson Canning Co.	1720 Broadway.	12	Westwego.
209	Lopez Canning Co.	Buras.	17	Buras.
210	C. B. Foster Packing Co.	City Price, La.	26	City Price.
211	Sea Food Company.	Westwego, La.	26	Westwego.
212	E. F. Falgout.	Golden Meadow.	29	Golden Meadow.
213	Golden Meadow Pkg. Co. Inc.	Golden Meadow.	9-9-27	Golden Meadow.

[fol. 46] Resident Salt Water Shrimp Drying Platform Licenses

1927. $15.00. 1928.

No.	Name	Address	Date	Platform located
126	Fou Loy & Co.	1113 Tulane Ave., New Orleans.	8-26-27	Basa Basa.
127	Quong Sun Co. Inc.	525 St. Louis St., New Orleans.	26	Bayou Defon.
128	Quong Sun Co. Inc.	525 St. Louis St., New Orleans.	26	Bayou Colas.
129	Leon Rojas.	Cabinash, P. O.	27	Grand Bayou.
130	E. F. Falgout.	Golden Meadow.	29	Golden Meadow.
131	Hing Long Co.	1111 Tulane Ave., New Orleans.	9- 1-27	Sister Lake.
132	Benoit, Joe.	Dulac.	10-1 -27	Bayou Solard.
133	Engeran, P. J.	Houma.		Houma.
134	Grand Caillou Packing Co. Inc.	Dulac.		Dulac.
135	Bourg, Harry.	Dulac.		Dulac.
136	Naquin, Victor.	Montegut.		Lacroix.
137	Blum & Bergeron.	Houma.		Sea Breeze.
138	Chauvin & Buquet.	Dulac.		Dulac.

[fol. 47] EXHIBIT "C" TO AFFIDAVIT

Copy

Resident Application for Permission to Use a Seine or Trawl for Taking Salt Water Shrimp from Louisiana Waters or a Vessel for Freighting Such Shrimp

We, Foster Fountain Co. of New Orleans, La., hereby make application to the Department of Conservation of Louisiana for permission to use trawls; seines not over 300 fathoms in length; and seines exceeding 300 fathoms in length. The trawls to be used from the

Motorboat	Miss Irma
"	Good Bros.
"	Bobbie
"	Giacamo
"	Chas. Redding

The seine to be used from——
(In each case give kind of vessel, name of vessel and length of the seine each vessel is to use.)

The shrimp to be freighted by——
(Give kind of vessel or vessels and name or names.)

and we hand you herewith check for $50.00, to pay for the same. Contingent upon granting of said permission, we agree to strictly conform with the following laws of the State of Louisiana:

1st. No seine or trawl having a mesh less than three quarters of an inch (¾") square may be used. And no seine measuring longer than stated in the license can be used until after said license has been exchanged for one of the required length. Sections 8 and 10 of Act 103 of 1926.

2nd. No seine or trawl may be used for taking shrimp for drying or canning from waters restricted by Sections 5 and 7 of Act 103 of 1926 or during the close seasons fixed in Section 5 of Act 103 of 1926.

3rd. No shrimp measuring less than is stipulated in Section 6 of Act No. 103 of 1926 may be taken by any trawl or seine for which license has been herein applied.

4th. All shrimp taken under authority of any license herein applied for must have shells or hulls and heads

treated in accordance with Section 13 of Act No. 103 of [fol. 48] 1926.

5th. All license fees and severance tax payments must be made to the Department by Check, Draft, Express Money Order or Post Office Money Order, may payable to the Department of Conservation of Louisiana.

6th. We hereby agree that any evasion or violation of the above laws or any other laws adopted by the Legislature of Louisiana for the control of shrimp or shrimp fishing or of any of the provisions of the shrimp laws of Louisiana (Act No. 103 of 1926) by ourselves or any of our employees shall be considered sufficient cause for immediate annulment of all licenses and permits issued us by the Department of Conservation and that we will make no demand upon the Department of Conservation of Louisiana, for the return of the money that has been paid for the same. And to all other penalties provided by law.

In witness Thereof We hereby affix our signature at—— this — day of ——, 19—.

Foster Fountain Co.
by Desporte, Jr.

Witness:————————
Address:————————

Note:—Section 14 of Act No. 103 of 1926 reads as follows:

"That every license issued by the Department of Conservation to any resident person, firm or corporation, under the laws of the State, authorizing the taking of salt water shrimp from the waters of the State for sale in their fresh state, or for canning, packing or drying purposes shall be issued only upon a written application in which it shall be stipulated as a matter of contract that the applicant will faithfully and fully comply with the laws of this State, and the rules and regulations of the Department of Conservation and will promptly pay the severance taxes levied on salt water shrimp taken from the waters of the State for canning, packing or drying in this State or for sale in their fresh state in this State. The Department of Conservation shall have the right to refuse to grant a license to any canning, packing or drying plant engaged in the shrimp industry that does not fulfill the requirements of [fol. 49] the specifications of the Board of Health of the

State of Louisiana adopted for sanitary regulations, the right of appeal being reserved to such applicant to the Court having jurisdiction thereof to review the findings of the Department of Conservation on the subject."

Received————————Date 9-1-27
OK. No.————————
On First Nat'l Biloxi
From Desporte Pkg. Co. for Foster Fountain Co.
For S. Trawles, 6694 to 6698
$50.00 Duplicated Receipt.
C. K. B. per copy.

[fol. 50] Department of Conservation of Louisiana
New Orleans Court Bldg., New Orleans

"Exhibit B" to Affidavit

W. J. Everett, Commissioner.

We, Foster Fountain Co. of West Side Pearl River, La. hereby certify that we have received only 1640 barrels of shrimp of 210 pounds each from Aug. 15th, 1927 to Oct. 1st, 1927, and that the same were sold fresh after being picked. (State whether canned or sold fresh. If canned, state in detail where canned and if sold fresh, state where in detail.)

We solemnly swear to the best of our knowledge and belief this statement is true and correct.

(Sgd) Foster Fountain Co. Inc.
R. Hart Chinn Secty & Mgr.

Sworn and subscribed to before me a Notary Public at Biloxi, Miss, Parish of——— State of Louisiana, this 21st day of October, 1927.

(Signed) W. J. Grant, Notary Public. (Seal.)

Note: These statements must be submitted to the Department and the payment of the severance tax of ten cents (10c) per barrel must be made on or before the tenth (10th) day of each month following, beginning August 1, 192–. All checks or drafts must be made payable to the department of Conservation of Louisiana and mailed to

Room 124, New Orleans Court Building, New Orleans, La., or handed personally to a representative of the Department.

[fol. 51] EXHIBIT "E" TO AFFIDAVIT

Resident Application for Permission to Use a Seine or Trawl for Taking Salt Water Shrimp from Louisiana Waters or a Vessel for Freighting Such Shrimp

Dept. of Conservation, Received Sep. 13, 1927

We Sea Food Company of Westwego, La., hereby make application to the Department of Conservation of Louisiana for permission to use 1 trawls; 1 sienes not over 200 fathoms in length; — seines not over 300 fathoms in length; and — seines exceeding 300 fathoms in length. The trawls to be used from the (Kind of vessel and name) Gas Boat Olivette, 1 Trawl and 1 Seine License for above named boat. The seine to be used from (In each case give kind of vessel, name of vessel, and length of the seine each vessel is to use.) The shrimp to be freighted by (Give kind of vessel or vessels and *and* name or names). And we hand you herewith Check for $25.00 to pay for the same. Contingent upon granting of said permission, we agree to strictly conform with the following laws of the State of Louisiana:

[fol. 52] 1st. No seine or trawl having a mesh less than three quarters of an inch (¾") square may be used. And no seine measuring longer than stated in the license can be used until after said license has been exchanged for one of the required length. Sections 8 and 10 of Act 103 of 1926.

2nd. No seine or trawl may be used for taking shrimp for drying or canning from waters restricted by Sections 5 and 7 of Act 103 of 1926 or during the close- seasons fixed in Section 5 of Act 103 of 1926.

3rd. No shrimp measuring less than is stipulated in Section 6 of Act No. 103 of 1926, may be taken by any trawl or seine for which license has been herein applied.

(Appears on Reverse)

4th. All shrimp taken under authority of any license herein applied for must have shells or hulls and heads

treated in accordance with Section 13 of Act No. 103 of 1926.

5th. All license fees and severance tax payments must be made to the Department by Check, Draft, Express Money Order, or Post Office Money Order, made payable to the Department of Conservation of Louisiana.

6th. We hereby agree that any evasion or violation of the above laws, or any other laws adopted by the Legislature of Louisiana for the control of shrimp or shrimp fishing, or any of the provisions of the shrimp laws of Louisiana (Act No. 103 of 1926) by ourselves or any of our employees, shall be considered sufficient cause for immediate annulment of all licenses and permits issued us by the Department of Conservation, and that we will make no demand upon the Department of Conservation of Louisiana for the return of the money that has been paid for the same. And to all other penalties provided by law.

In Witness Thereof We hereby affix our signature at Biloxi, Miss., this 12th day of September, 1927.

(Sgd.) Sea Food Company, by A. R. Heidenheim.

Witness: (Sgd.) Bert O. Gunn. Address, Biloxi, Miss.

[fol. 53] Note: Section 14 of Act No. 103 of 1926 reads as follows:

"That every license issued by the Department of Conservation to any resident persons, firm or corporation, under the laws of the State, authorizing the taking of salt water shrimp from the waters of the State for sale in their fresh state, or for canning, packing or drying purposes, shall be issued only upon written application in which it shall be stipulated, as a matter of contract, that the applicant will faithfully and fully comply with the laws of this State and the rules and regulations of the Department of Conservation, and will promptly pay the severance taxes levied on salt water shrimp taken from the waters of the State for canning, packing or drying in this State or for sale in their fresh state in this State. The Department of Conservation shall have the right to refuse to grant a license to any canning, packing or drying plant engaged in the shrimp industry that does not fulfill the requirements of the specifications of the Board of Health of the State of

Louisiana adopted for sanitary regulations, the right of appeal being reserved to such applicant to the Court having jurisdiction thereof to review the findings of the Department of Conservation on the subject."

68506 R-J.

[fol. 54] EXHIBIT "G" TO AFFIDAVIT

Resident Application for Permission to Use a Seine or Trawl for Taking Salt Water Shrimp from Louisiana Waters or a Vessel for Freighting Such Shrimp.

Dept. of Conservation, Received Sept. 13, 1927

We, Foster Fountain Co., Inc., of New Orleans, La., hereby make application to the Department of Conservation of Louisiana for permission to use four trawls; — seines not over 200 fathoms in length — seines not over 300 fathoms in length; and — seines exceeding 300 fathoms in length. The trawls to be used from the (Kind of vessel and name) gas boats Mark A, Spica, Marie Inez, Oneida. The seine to be used from (In each case give kind of vessel, name of vessel, and length of the seine each vessel is to use). The shrimp to be freighted by (Give kind of vessel or vessels and name or names) gasboats Ursula C; Whillamene; R. O. C. Elwood F; Winford B; Carl F. And we hand you herewith check for $40.00 to pay for the same.

Contingent upon granting of said permission, we agree to strictly conform with the following laws of the State of Louisiana:

[fol. 55] 1st. No seine or trawl having a mesh less than three-quarters of an inch (¾") square may be used. And no seine measuring longer than stated in the license can be used until after said license has been exchanged for one of the required length. Sections 8 and 10 of Act 103 of 1926.

2nd. No seine or trawl may be used for taking shrimp for drying or canning from waters restricted by sections 5 and 7 of Act 103 of 1926 or during the close seasons fixed in Section 5 of Act 103 of 1926.

3rd. No shrimp measuring less than is stipulated in Section 6 of Act No. 103 of 1926, may be taken by any trawl or seine for which license has been herein applied.

(Appears on Reverse)

4th. All shrimp taken under authority of any license herein applied for must have shells or hulls and heads treated in accordance with Section 13 of Act No. 103 of 1926.

5th. All license fees and severance tax payments must be made to the Department by Check, Draft, Express Money Order, or Post Office Money Order, made payable to the Department of Conservation of Louisiana.

6th. We hereby agree that any evasion or violation of the above laws, or any other laws adopted by the Legislature of Louisiana for the control of shrimp or shrimp fishing, or of any of the provisions of the shrimp laws of Louisiana (Act No. 103 of 1926) by ourselves or any of our employees, shall be considered sufficient cause for immediate annulment of all licenses and permits issued us by the Department of Conservation, and that we will make no demand upon the Department of Conservation of Louisiana for the return of the money that has been paid for the same. And to all other penalties provided by law.

In Witness Thereof We hereby affix our signature- at New Orleans, La., this 30th day of August, 1927.

Foster Fountain Co., Inc. (Sgd.) R. Hart Chinn, Secty. Witness ——, Address ——.

[fol. 56] Note: Section 14 of Act No. 103 of 1926 reads as follows:

"That every liscense issued by the Department of Conservation to any resident persons, firm or corporation, under the laws of the State, authorizing the taking of salt water shrimp from the waters of the State for sale in their fresh state, or for canning, packing or drying purposes, shall be issued only upon a written application in which it shall be stipulated, as a matter of contract, that the applicant will faithfully and fully comply with the laws of this State and the rules and regulations of the Department of Conservation, and will promptly pay the severance taxes levied on salt water shrimp taken from the waters of the State for canning, packing or drying in this State or for sale in their fresh state in this State. The Department of Conservation shall have the right to refuse to grant a license to any canning, packing or drying plant engaged in

the shrimp industry that does not fulfill the requirements of the specifications of the Board of Health of the State of Louisiana adopted for sanitary regulations, the right of appeal being reserved to such applicant to the Court having jurisdiction thereof to review the findings of the Department of Conservation on the subject."
68506 R-J.

[fol. 57] Copy

Department of Conservation of Louisiana

New Orleans, La., Sept. 1, 1927.

Re: Resident Salt Water Shrimp.

Trawl License Nos. 6694—6695 $10.00 each; 6696—6697—6698. For use with gasboats Miss Irma; Good Bros; Bobbie; Giacomo; Chas. Redding.

Requested by Mr. Desporte

Foster Fountain Co., Inc.,
New Orleans, La.,
c/o Foster Fountain Co.,
Biloxi, Miss.

Dear Sir:

We enclose herewith license to use a salt water shrimp trawl from the gasboat named above, until the 30th of next June, subject to the provisions printed thereon.

We are also enclosing a metal tag bearing the same number as the license. This tag must be tacked in a conspicious place in the cabin of the gasboat from which the trawl is operated.

Yours very truly,

Department of Conservation, Percy Viosca, Jr., Director, Fisheries Divison. vd. cc. Desport Packing Co.

[fol. 58] Minute entry of argument and submission Oct. 27, 1927, omitted in printing.

[fol. 59] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF L. O. JOHNSON, JR., AND R. HART CHINN, ON BEHALF OF PLAINTIFF—Filed October 26th, 1927

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public in and for the City of Biloxi, Harrison County, Mississippi, L. O. Johnson, Jr., and R. Hart Chinn, residents of Biloxi, Mississippi, each of whom after being by me duly sworn did depose and say:

That affiant, L. O. Johnson, Jr., is thirty-five years of age, has been a resident and citizen of Biloxi, Harrison County, Mississippi, during his entire life, and has been engaged in the handling of shrimp for the past fifteen years, and that affiant R. Hart Chinn is thirty-nine years of age, has been a resident and citizen of Biloxi, Harrison County, Mississippi, for the past thirty-five years, and has been engaged in the handling of shrimp for the past eight years.

That until some five or six years ago there was practically no demand for raw shrimp outside of the local markets, but that during the past three years the demand for raw shrimp outside of the local markets has increased to such an extent that an average of fifty or more barrels of raw shrimp daily are shipped daily to Northern, Eastern and Western markets, and that the demand for such shrimp is steadily increasing.

Affiants further state on information and belief that when the present Louisiana Shrimp Act was pending in the Louisiana Legislature a number of Raw Shrimp Dealers from New Orleans, Louisiana, at the request of Mississippi interests opposing such legislation appeared at Baton Rouge for the purpose, as the Mississippi interests understood, [fol. 60] of opposing such legislation; that on the morning after their arrival in Baton Rouge they appeared for a Committee hearing on this legislation, and before said hearing said Louisiana Raw Shrimp Dealers advised the Mississippi interests that they had decided to favor, rather than oppose, the bill, giving as their reason for changing their position that they had been assured by the Department of Conservation Officials that the law would be en-

forced in such manner as would in no way interfere with the shipment of raw shrimp with the hulls or heads on from New Orleans and other points in the State of Louisiana by Louisiana raw dealers to points outside of the State of Louisiana, provided, however, that such shipments were not to be made to canneries operating in the State of Mississippi, and that said Louisiana Raw Shrimp shippers further stated that with Mississippi canners being prevented from procuring Raw Shrimp from independent and other fishermen within the State of Louisiana that the said Louisiana raw shrimp dealers would be greatly benefited in their efforts to secure raw material at a lower price and in greater quantities, with smaller invested capital, thereby assuring them of a constant supply of raw shrimp to supply an ever increasing demand for raw shrimp with the hulls and heads on for shipment to points outside of the State of Louisiana, and affiants further state that they believe these arguments were used by the Department of Conservation Officials and attorneys representing Louisiana interests favorable to this legislation in their efforts to prevent the delegation of Raw Shrimp Dealers from New Orleans from appearing before the Senate Committee of the Louisiana Legislature for the purpose of opposing such legislation.

Affiants further state on information and belief that the Raw Shrimp Dealers of Louisiana have been allowed to continue the shipment of raw shrimp with hulls and heads on by common carriers in interstate commerce since the present Louisiana Shrimp Act went into effect, in violation of said Act, said shrimp having been procured from the [fol. 61] waters of the State of Louisiana defined and embraced within said Shrimp Act, being the same species and kind of shrimp and taken from the same waters and by the same methods, boats and fishermen as were prevented, by vigorous enforcement methods by the Officials of the Department of Conservation of the State of Louisiana, from being delivered by Foster Fountain Company, Inc., into Mississippi.

Affiants further state on information and belief that the shrimp permitted to be shipped in interstate commerce by the Louisiana Raw Shrimp Dealers, with full knowledge of the Officials of the Department of Conservation of the State of Louisiana, are known by the said Officials to be the

identical shrimp caught in the same waters as were prohibited by said Officials, until enjoined from so doing, from being shipped into Mississippi on boats by Foster Fountain Company, Inc., it being the intention of the Officials of the Department of Conservation of the State of Louisiana to not interfere in any manner whatsoever with the business of the Raw Shrimp Dealers of the State of Louisiana, legal or otherwise, especially with the shipment of raw shrimp with hulls and heads on by said Raw Shrimp Dealers of the State of Louisiana to points outside of the State of Louisiana, it being well known to said Officials of the Department of Conservation of the State of Louisiana that all shrimp caught within the State of Louisiana, with the exception of a small quantity of River Shrimp and limited catches of Gulf shrimp caught only at certain short periods during the season, are shrimp prohibited under the Louisiana Shrimp Act from being shipped outside the State of Louisiana with hulls and heads on; notwithstanding this knowledge, affiants state, on information and belief, that at all seasons of the year shrimp are permitted, by said Officials, to be shipped outside the State of Louisiana, by Louisiana Raw Shrimp Dealers, with hulls and heads on, with no apparent effort being made by said Officials to prevent such shipments by the raw shrimp dealers of the State of Louisiana.

Affiants further state on information and belief that the [fol. 62] Officials of the Department of Conservation charged with the enforcement of the Louisiana Shrimp Act are knowingly permitting the shipment of raw shrimp with hulls and heads on by Louisiana raw shrimp dealers to points outside the state of Louisiana in violation of said act and are fully aware of the subterfuge being used in procuring bills of lading on such raw shrimp from Express Companies and other common carriers, said subterfuge being in the nature of statements or affidavits made by boatmen and others to the effect that said shrimp had been procured outside the limits of the State of Louisiana as prescribed in said Shrimp Act, which said statements and affidavits are known, by said Officials, to be false and made solely for the purpose of enabling Louisiana raw shrimp dealers to make shipments of raw shrimp with hulls and heads on in violation of the provisions of said Shrimp Act.

Affiants further state that if said Officials charged with the enforcement of said act had employed the same diligence in the enforcement of said act relative to shipments by Louisiana raw shrimp dealers by common carriers to points outside the State of Louisiana as said Officials employed in enforcing said Act against the Foster Fountain Company, Inc., prior to the granting of the injunction in this cause, that said raw shrimp dealers in Louisiana would have been seriously injured in their business in that their shipments, if limited strictly to shrimp caught outside the waters of the State of Louisiana as defined in said Shrimp Act, would have been very irregular and in such small quantities as would not have been profitable. Affiants further state on information and belief that the failure of the Officials of the Department of Conservation of Louisiana to diligently enforce the Shrimp Act against the Louisiana raw shrimp dealers as above set out is due to the fact that said Officials are fully aware that a strict enforcement of said Act would result in destroying the industry of shipping shrimp by express for fresh consumption in the large centers of population by the raw shrimp dealers of the State of Louisiana; that said Officials desire to refrain from any act which [fol. 63] would destroy said raw shrimp industry, and for this reason have not used the same amount of diligence in enforcing said act relative to the movement of said raw shrimp with heads and hulls on from the State of Louisiana by common carrier as had been employed against Foster Fountain Company, Inc., prior to the granting of the injunction in this cause, which said methods in the enforcement of said act by said Officials result in a discrimination against Foster Fountain Company, Inc. in the shipment of raw shrimp with hulls and heads on from the State of Louisiana to points outside of said State.

And further affiants sayeth not.

(Sgd.) L. O. Johnson, Jr., (Sgd.) R. Hart Chinn.

Sworn to and subscribed before me this 25th day of October, 1927.

(Sgd.) Antonia Peresich, Notary Public. (Seal.)

[fol. 64] AFFIDAVIT OF LOUIS BRAUN ON BEHALF OF PLAINTIFF —Filed Oct. 25, 1927

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, Louis Braun, a resident of Biloxi, Mississippi, who being by me first duly sworn did depose and say:

That he is thirty-nine years old and for the past fifteen years has been familiarly associated with the shrimp and oyster business, having for ten years been connected with concerns packing shrimp and oysters and manufacturing their by-products.

That part of this time he was engaged in the manufacturing of shrimp at Lockport, Louisiana, and is thoroughly familiar with the conditions of the shrimp business in Louisiana as well as in Mississippi.

Affiant further states that during the entire time he was engaged in the packing business at Lockport, Louisiana, no effort was made by any one to use the shrimp hulls resulting from the canning of shrimp, and these hulls constituted a nuisance that was hard for him to remove.

That shrimp hulls in a raw state, while having some small fertilizer value, are also possessed of such a disagreeable odor, that when placed in a raw state in the field they are obnoxious to people residing for miles around, and that this condition exists during the entire period of their rotting, which is for several weeks.

[fol. 65] Affiant further states that he knows of no use that has been made of these shrimp hulls in Louisiana except in a few isolated instances and except for the small amount of hulls which are dried by one or two factory owners. However, the dried hulls are not used in Louisiana but are shipped out of Louisiana in interstate commerce and are used with other fertilizer in a mixture manufactured by a concern located near Biloxi, Mississippi.

Affiant further states that he is familiar with the shrimp region South of New Orleans and knows that while there is an abundant supply of shrimp that on account of climatic

conditions, no one can engage successfully in packing these shrimp for the reason that no communities have been able to be built giving a sufficient labor supply. The water supply is also unsatisfactory, and this, together with the mosquitoes and green heads, have forbidden any successful canning in this region, and unless the shrimp caught by the fishermen in this region are sold to Biloxi there will be no use of these shrimp and nothing will be yielded to the people of Louisiana because of their presence. That the only effect of the enforcement of the law will be that persons catching shrimp West of the Mississippi River will find a market for these shrimp cheapened by the absence of competition on the East side.

Affiant further states that if the competition of Mississippi canners is withdrawn from the Louisiana shrimp field, that it will leave a few companies monopolizing this output of food to such an extent that it will be felt in the increasing price of manufactured shrimp throughout the United States. Shrimp are being used extensively all over United States with approximately ninety five per cent of the Louisiana shrimp destined for foreign consumption from the time they are caught in the waters of the State of Louisiana.

[fol. 66] Affiant further states that by reason of his familiarity of the whole shrimp and oyster business, he knows that the present effect of an enforcement of the shrimp law against the Sea Food Company and against the Foster Fountain Company, Inc. would constitute a large loss and that their damage would be irreparable and without hope of recoupment.

Affiant further states that the general practice prevalent in the State of Louisiana with reference to shrimp hulls are that the same are destroyed or thrown away by the packers of shrimp at a loss and expense to these packers.

And further affiant sayeth not.

(Sgd.) Louis Braun.

Sworn to and subscribed before me, this the 24th day of October, A. D. 1927.

(Sgd.) Antonia Peresich, Notary Public. (Seal.)

[fol. 67] AFFIDAVITS OF TONY GUERRA, AND OTHERS, ON BEHALF OF PLAINTIFF—Filed October 25, 1927

(Map attached to original of this affidavit transmitted in the original, under order of Court)

[Title omitted]

Personally appeared before me, A. S. Gorenflo, a duly qualified and acting Notary Public in and for the City of Biloxi, Harrison County, Mississippi, the following persons, to-wit: Tony Guerra, Ben Robin, John Alphonse, Victor Molero, Henry Couture, Sebastian Gonzales, Marco Molero, Frank Russell, Manuel Molero, Sr., Willie Alonzo and Manuel Molero, Jr., who thereupon after being duly sworn by me to tell the truth did depose and say:

That each and every one of affiants is a resident of St. Bernard Parish, having lived in said parish during the entire life of each of affiants. That the respective ages of said affiants are as follows: Tony Guerra, twenty-six; Ben Robin, twenty-eight; John Alphonse, twenty-five; Victor Molero, twenty-nine; Henry Couture, sixty-one; Sebastian Gonzales, twenty-one; Marco Molero, sixty-two; Frank Russell, twenty-one; Manuel Molero, Sr., forty-two; Willie Alonzo, thirty-three; Manuel Molero, Jr., nineteen. That the occupation of each of said affiants is that of a trapper and fisherman and for years past each of affiants have been engaged in this business, trapping and fishing in the parishes of St. Bernard and Plaquamine, Louisiana, within that territory encircled with red ink on the map attached hereto and made a part of this affidavit.

That on account of the residence of affiants and because of their occupation they are familiar with all of the conditions existing in the said parishes of St. Bernard and Plaquamine with reference to the catching of oysters and shrimp, and are further familiar with the general climatic conditions in said parishes, as well as its effect upon occupations, industry and agriculture.

Affiants further state that these parishes consist of a small alluvial belt of land varying from one to ten miles in width on the east bank of the Mississippi River immediately below New Orleans, and then extending east for some thirty to fifty miles in a series of flats covered with

marsh grass and interspersed with bays and bayous, which latter described land is commonly known among fishermen [fol. 68] as the Louisiana Marsh. That during the past fifty or seventy-five years the chief agricultural endeavors of the inhabitants of these parishes has been the raising of cane, rice, vegetables and fruits but this occupation has been unprofitable and hazardous for two reasons; the first reason being that the Mississippi River when at its flood stage usually breaks its banks some where near New Orleans, or the banks of the river are broken for the protection of New Orleans and thereby the above described country becomes flooded with river water, in each instance ruining the crops of the inhabitants. The second reason is that, on account of the low altitude of the land with reference to sea level and on account of the prevalence along this coast of periodical tropical hurricanes the land is often times flooded about the time the crops are gathered with the waters of the Gulf of Mexico which waters are sent inland and over the flat land by the force of the wind driving it through the bays and bayous above described, and on to the land near the river banks, in this manner again destroying whatever crops were planted and ungathered.

Affiants further state that because of the above reasons and for the further reason that the nearness of the marsh assists in the breeding of mosquitoes and other insects that prove detrimental both to persons as well as to cattle, that a great many of the persons in said parishes, particularly in Plaquamine Parish, and in the lower regions of St. Bernard Parish, have been compelled to engage in the fishing of shrimp and oysters and in the catching of muskrats as a means of livelihood. That for years past, affiants have been engaged in this occupation, along with the majority of the residents of said parishes, and the method of their disposal of their catch has been as follows: the fishermen using either their own boats or small boats lent them or rented them by canning companies, would go out into the marsh and in the bays and bayous and catch shrimp, which on account of the perishable nature of the shrimp, had to be hastily disposed of, and these shrimp would then be brought to a freight boat owned by one of the various factories canning shrimp, and this freight boat, loaded with ice, after buying the shrimp would take the shrimp into

Biloxi, Mississippi, where the same may be canned in the various canneries at Biloxi. That for some reason unknown to affiants, but evidently caused by the climatic con- [fol. 69] ditions prevailing in the above parishes no cannery in the past has had a successful existence on the eastern banks of the Mississippi River or in the bays and bayous contigious thereto. That at the present time there exists only one such cannery and affiants are informed and believe that the same is now being rented or has recently been sold under a receivership proceedings. That on account of the non-existence of such cannery on the eastern banks of the Mississippi River or in the bayous lying nearby the fishermen living in the two parishes aforesaid had had almost completely to depend upon the market furnished by the packers of shrimp and oysters at Biloxi. That in Biloxi there is situated from fifteen to twenty canneries, each owned by independent concerns, and not only is a market furnished thereby, to affiants and other fishermen of St. Bernard and Plaquamine parishes, but that on account of the diverse interests owning said factories this market is a competitive market. That by reason of this market and by reason of the winter catch of muskrats the prosperity of the fishermen and inhabitants of the two parishes in the past has been soundly assured.

Affiants further state, however, that during the early part of the year 1927 it was necessary, in order to save the city of New Orleans from flood or from the dangers of a flood, that a crevasse be made in the central part of St. Bernard Parish at Caernavon, Louisiana. That one of the effects of this crevasse was an almost total destruction of this year's supply of muskrats. That thereby the fishermen and other inhabitants of this parish, their farms having been largely injured by the flood, were almost completely dependent upon the subsistence gained from shrimp and oysters. That when the shrimp season of 1927 opened, affiants were informed that the Louisiana Shrimp Act went into effect, preventing affiants from selling their catch to persons residents of Mississippi, or from themselves taking their catch of shrimp, in pursuance of agreements already made, to canneries in Mississippi. That due to this state of affairs the affiants had no market except such market as was afforded by one factory at Violet, Louisiana,

and thereby not only were they compelled to greatly curtail their catch of shrimp, but the chief result of this condition was that the price of shrimp immediately dropped from a [fol. 70] price of 1926 prevailing at $5.00 or $5.50 per barrel to a price of $4.50 per barrel, with no ready market for the catch at this price. That in addition, affiants were compelled to give a barrel of two hundred fifty pounds or thereabouts of shrimp per barrel as against a weighed barrel used by the packers in Mississippi of an even two hundred pounds. That not only did this condition exist, but in numbers of instances persons catching shrimp were unable to obtain any market for the same whatsoever and it was necessary that the result of their labor be by them reconsigned to the sea from which it was gathered.

That affiants further state that in addition to the above, that other arbitrary rules and requirements were made by the few purchasers of shrimp at Violet, Louisiana, and thereabouts, with the result that the earnings of affiants and other fishermen were decreased and their means of liv-lihood, which is in any case a hard one, was thereby greatly burdened.

Affiants would further state that if the validity of the Louisiana Shrimp Act is sustained and the competitive market from Biloxi is destroyed and made impossible, that its chief effect will be felt upon the fishermen of Southeast Louisiana in the form of a decreased earning capacity and a decreased opportunity of selling the abundant supply of shrimp prevailing in its waters and the enforcement of said act will tend to create a monopoly among a few persons in Louisiana in the buying, canning and selling of shrimp and oysters in that part of Louisiana.

Affiants further state that shrimp are a migratory fish coming into the waters of the State of Louisiana from places unknown to affiants. That the location of shrimp changes from day to day. On one day you may find the shrimp in the eastern part of the waters outlined herein, and on the next day the same shrimp may be fifteen or twenty miles distant therefrom. That not only is this true, but that in many years the supply of shrimp is inexhaustible, that their catch depends upon the ability of the packer to sell the shrimp and that in the opinion of affiants no public purpose of conservation can be served the people

of Louisiana by the enforcement of said law, nor will it assist in conserving the supply of shrimp in Louisiana, but, [fol. 71] unless present conditions change, will prove detrimental to those people in Louisiana who live in proximity to the supply of shrimp and oysters and who fish for them as a means of liv-lihood.

Affiants further state that the heads and hulls of the shrimp are of small, if any, value, and in most of the factories in Louisiana, to the personal knowledge of affiants, are thrown away by the factories and are a nuisance in the bayous and bays where they are thrown. That were any of affiants to-day to offer any quantity of these shrimp hulls and heads to any factory in their neighborhood the same would be refused as a gift and, there is positively no market value for these heads and hulls in that part of Louisiana known to affiants.

Affiants further state, upon information and belief, that had the restraining order secured from the United States Court by the Foster-Fountain Company, Inc., not been obtained that at this time not only would their ability to sell shrimp have been very greatly curtailed, but that the market price of shrimp of $6.00 per barrel now prevailing in Louisiana would have been as low as $4.00 per barrel for a much larger barrel.

Affiants further state that due to the flood hereinabove mentioned with its resultant destruction of property values that at the present time the conditions prevailing among the fishermen of said parishes is distressing and a great many of — persons who have been engaged in this business will be threatened with actual want during the coming winter, unless a free and complete market can be had for the fish and oysters caught by them and any destruction of this market would not only injure affiants and other fishermen engaged in this business, but would bring with it actual suffering and want to the families of many of the fishermen of these two parishes.

Affiants further state that in the knowledge of affiants gained in the fishing of shrimp, that no commercial shrimp in the state of Louisiana are caught in the outside waters of this state, that is outside of the territorial boundaries set out in the shrimp act herein mentioned.

Affiant, Victor Molero, especially makes affidavit herein that on one occasion, before the restraining order herein

[fol. 72] mentioned was obtained, that upon delivery of eighty barrels of shrimp to one of the factories in Louisiana he was compelled to take pay therefor at the rate of fifty-one barrels, and that this burden and hardship placed on him was due wholly to the fact that he had no outside market in which to sell said shrimp.

Affiants further state that they, being residents and citizens of the State of Louisiana, are entitled to catch shrimp in those waters and under the provisions of the shrimp act herein referred to are entitled to hold said shrimp as their property and to sell the same to any persons in the State of Louisiana, and that they have in times past sold shrimp to all of the factories in Biloxi, including Foster-Fountain Company, Inc., and at this time would be willing to sell any of their catch to any of said factories, including the Foster-Fountain Company, Inc., provided the market price therefor was paid by said Foster-Fountain Company, Inc.

Affiants further state that an affidavit containing the above facts could be obtained from hundreds of fishermen of St. Bernard and Plaquemine parishes.

Affiants further state that a specific instance of the effect of the law is that prior to the granting of the restraining order, there was no competitive market prevailing and none of affiants were able to make any profit whatsoever from their labor, but that immediately three days after the granting of said injunction, affiants were able to share a profit of $70.00 each.

Affiants further state that in St. Bernard Parish and in Plaquemine Parish that the labor conditions, by reason of the fact that there are no large communities, are such that shrimp and oysters cannot be packed to the best advantage, the reason for this being that while five or six fishermen might be able to catch fifty barrels of shrimp in a day that it would take several hundred women and children to pack this number of shrimp, and for the further reason that the water supply in the above parishes mitigates against the packing of wet shrimp and the large demands for shrimp is for shrimp packed in cans but suspended in water, whereas the water at Biloxi, being artesian water, enables the shrimp to be kept for a much longer time than shrimp packed in either river water or artesian water obtained

from the above parishes, one of the results of packing in [fol. 73] the latter water being that the shrimp very quickly become discolored and unsalable.

And further deponents sayeth not.

(Sgd.) Tony Guerra. (Sgd.) Ben (his X mark) Robin. Witness (Sgd.) Hazel L. Burke. (Sgd.) John Alphonse. (Sgd.) Victor Molero. (Sgd.) Henry Couture. (Sgd.) Sebastian (his X mark) Gonzales. Witness (Sgd.) W. L. Guice. (Sgd.) Marco Molero. (Sgd.) Frank Roussell. (Sgd.) Manual (his X mark) Molero, Sr. Witness (Sgd.) J. O. Whetstone. (Sgd.) Willie Alonzo. (Sgd.) Manuel Molero, Jr.

Sworn to and subscribed before me, this the 20th day of September, A. D., 1927.

(Sgd.) A. S. Gorenflo, Notary Public. (Seal.)

My commission expires 3-14-1930.

[fol. 74] AFFIDAVIT OF L. O. JOHNSON, ON BEHALF OF PLAINTIFF—Filed Oct. 26, 1927.

[Title omitted]

Personally appeared before me A. S. Gorenflo, a Notary Public duly commissioned in and for the City of Biloxi, Harrison County, Mississippi, L. O. Johnson, who being by me first duly sworn did depose and say:

That he is a resident of Biloxi, Mississippi, and is engaged in the fish and oyster business at Biloxi, Mississippi, and has been so engaged for the last twelve years.

That at the present time he sells and ships oysters, shrimp and fish raw or in their natural state, and also packs and cans shrimp and oysters.

That affiant knows of his own knowledge that shrimp are shipped from the State of Louisiana to the State of Mississippi by citizens residents of Louisiana who are engaged in the business of selling raw shrimp and oysters, and is informed and believes that the Conservation Department of the State of Louisiana knows of such shipment be-

ing made and ignores the fact that this is a violation of the so called Louisiana Shrimp Act for the reason that an enforcement of said law would very seriously injure and help destroy the business of such raw oyster and shrimp merchants in New Orleans.

That this affiant knows that any one without the State of Louisiana may order and receive such shrimp in their natural state, affiant having not longer than ten days ago ordered a quantity of such shrimp, to-wit: twenty-five pounds each from two different merchants in Louisiana, and the same were delivered to the express company in New Orleans and by the express company delivered to affiant at Biloxi, Mississippi.

[fol. 75] That there is no difference in the natural state of these shrimp from the same shrimp caught in the waters of the State of Louisiana and by a fishermen who catches shrimp sold to the factories in Biloxi, Mississippi, who in Biloxi, Mississippi, clean or pick the shrimp and can the same for shipment in interstate commerce.

Affiant further states that, in his opinion, that shrimp hulls have little, if any value for fertilizer purposes, and knows that at the present time that by far a majority of such hulls are thrown overboard after being cleaned from the shrimp and no attempt is made either in Louisiana or in Mississippi to conserve same for any purpose.

And further deponent sayeth not.

(Sgd.) L. O. Johnson.

Sworn to and subscribed before me, this the 23 day of September, A. D. 1927.

(Sgd.) A. S. Gorenflo, Notary Public. (Seal.)

My commission expires 3-14-1930.

[fol. 76] AFFIDAVIT OF R. HART CHINN, ON BEHALF OF PLAINTIFF—Filed Nov. 7, 1927.

[Title omitted.]

Personally came before me, the undersigned officer, R. Hart Chinn, President of the Foster-Fountain Co., Inc., one of the complainants in the above entitled cause, who,

by me being duly sworn, makes oath that he is the President of the Foster-Fountain Co., Inc., a Louisiana corporation, one of the complainants in the above entitled cause:

That said company did operate a hulling plant on the Louisiana coast, but does not operate a canning plant or drying factory in the State of Louisiana; that the Conservation Department of the State of Louisiana refused to grant said company boat licenses to catch shrimp in the waters of the State of Louisiana unless said Company also took out license to operate a drying platform or a cannery, and, in order to secure the right to obtain boat licenses for catching shrimp in said waters, as it was entitled to do, and for no other purpose, said company took out licenses to operate a cannery in the State of Louisiana. Affiant states that it was never, as set forth in several affidavits on file in this case, represented before the Legislature of the State of Louisiana, 1925, by John Kennedy and Mr. O'Keefe or any other attorneys. The affiant appeared before the Legislature of the State of Louisiana on behalf of the said corporation individually himself and, in opposition to the bill in question, addressed committees of the said Legislature of the State of Louisiana; that he had nothing, however, to do with the preparation of the bill passed; that he was opposed to the bill as originally offered and used all honorable means to defeat the same; that when it became perfectly apparent, however, that the bill would be passed, he did agree that he would cease further active opposition to the bill before the Legislature of the State of Louisiana, upon the insertion of the amendment postponing the operation of the Act for one year; but affiant, at no time, for the company represented by him, agreed expressly or by implication that he would move his plant to the State of Louisiana or would erect one in the State of Louisiana. When it became apparent that, in spite of his objections, as well as the objections of other persons, the [fol. 77] bill would be passed, affiant, as he had the right to do, acquiesced in the amendment postponing the effective date of the Act for one year; but affiant never agreed, at any time, expressly or by implication, to accept the bill in its finality or to be bound by its provisions, and in no way waived his right as a citizen of the United States to contest the measure as a valid piece of legislation; nor is he estopped in any manner to secure a judicial determination

as to the validity of the bill or any other of the sections thereof.

(Sgd.) R. Hart Chinn.

Sworn to and subscribed before me, this 2d day of November, 1927.

(Sgd.) Antonio Peresiet, Notary Public.

Copy.

Copy served on M. M. Irwin, Assistant Attorney General, who agreed verbally to the filing of the afidavit and the consideration thereof by the court.

[fol. 78] AFFIDAVIT OF W. L. GUICE, ON BEHALF OF PLAINTIFF—Filed Oct. 27, 1927.

[Title omitted.]

Before me the undersigned Clerk of the above Court personally appeared W. L. Guice, who being duly sworn by me did depose and say:

That he is well acquainted with the subject of the controversy herein, and knows that the amount of said controversy exceeds the sum of three thousand dollars, as is fully set out in the bill of Complaint herein on file.

And further deponeth sayeth noth.

(Sgd.) W. L. Guice.

Sworn to and subscribed before me this day, the 27th of October, 1927.

(Sgd.) N. H. Lewis, Deputy Clerk, U. S. District Court, Eastern District of La.

[fol. 79] AFFIDAVIT OF R. HART CHINN, ON BEHALF OF PLAINTIFF—Filed Oct. 27, 1927.

[Title omitted.]

Personally came before me the undersigned officer, R. Hart Chinn, President of the Foster-Fountain Co., Inc., one of the complainants in the above entitled cause, who

by me being duly sworn makes oath that he is the President of the Foster-Fountain Co., Inc., a Louisiana Corporation, one of the complainants in the above entitled cause:

That said Company does not operate a canning plant, or drying factory in the State of Louisiana; that the Conservation Department of the State of Louisiana refused to grant said Company a boat license to catch shrimp in the waters of the State of Louisiana unless said Company also took out a license to operate a drying platform or a cannery, and in order to secure the right to obtain boat licenses for catching shrimp in said waters and for no other purpose, said Company, as it was entitled to do, took out licenses to operate a cannery in the State of Louisiana though it has never operated such a cannery in the State of Louisiana. Affiant states that it has entered, as set forth, in several affidavits on file in this case that the Foster-Fountain Co., Inc., was ever represented before the Legislature of the State of Louisiana at the sessions referred to by John Kennedy and Mr. O'Keefe or any other attorneys. That affiant appeared before the Legislature of the State of Louisiana on behalf of the said Corporation individually himself and in opposition to the bill in question, addressed committees of the said Legislature of the State of Louisiana; that he had nothing, however, to do with the preparation of the bill passed; that he was opposed to the bill as originally offered and used all honorable means to defeat the same; that when it became perfectly apparent, however, that the bill would be passed, he did agree that he would cease further active opposition to the bill before the Legislature of [fol. 80] the State of Louisiana, upon the insertion of the amendment postponing the operation of the Act for one year, but affiant, at no time, on his behalf, or for the Company, represented by him, agreed expressly or by implication that he would move his plant to the State of Louisiana or would erect one in the State of Louisiana. When it became apparent that, in spite of his objections as well as the objections of other persons, that the bill would be passed, affiant, as he had the right to do, acquiesced in the amendment postponing the effective date of the Act for one year, but affiant never agreed, at any time, expressly or by implication, to accept the bill in its finality or to be bound by its provisions, in no way waive his right as a citizen of the

United States to contest the measure as a valid piece of Legislation nor is he estopped in any manner to secure a judicial determination as to the validity of the bill or any of the sections thereof.

(Sgd.) R. Hart Chinn.

Sworn to and subscribed before me this 27th day of October, 1927.

(Sgd.) N. H. Lewis, Deputy Clerk, U. S. District Court, Eastern District of Louisiana.

[fol. 81] AFFIDAVIT OF L. O. JOHNSON, ON BEHALF OF PLAINTIFF—Filed Oct. 26, 1927

[Title omitted.]

Personally appeared before me, the undersigned authority, a Notary Public duly commissioned and qualified under the laws of the State of Mississippi to act in the City of Biloxi, Harrison County, Mississippi, L. O. Johnson, who, after the said L. O. Johnson had been by me duly sworn, did depose as follows, to-wit:

That he, the said affiant, is a resident of Biloxi, Mississippi, and has resided in said city and state for the last thirty years;

That the affiant is thirty-five years old and for the past twenty years has been intimately acquainted with the shrimp and oyster packing and canning business in the City of Biloxi, Mississippi, for the last twelve years having been the director and manager of Johnson Fish & Oyster Company, one of the largest packing houses on the Mississippi Gulf Coast; that as such manager and director it has been his duty to investigate the shrimp industry beginning with the catching of said shrimp and their havits, etc. and ending with the packing and selling of said shrimp; that in gaining this information he has made personal inspections of the fishing grounds, has talked to hundreds of men engaged in the fishing business and has observed the operation nearly every plant packing shrimp in the state of Mississippi and on the eastern banks of the Mississippi River [fol. 82] in the State of Louisiana;

That affiant is acquainted with the bays, sounds and inlets in Louisiana where shrimp are caught and with the habits, customs and business methods of the native shrimpers in Louisiana who catch said shrimp, as well as of the Mississippi shrimpers who engage in a like business.

Therefore, from the above information in possession of affiant, affiant does further depose and say: that the shrimp industry originating in the Southern States about fifty or sixty years ago has grown to be a business where at least forty or fifty plants or packing houses are engaged in the packing of shrimp in the southern states; that with the exception of the Coast of Chile, most of the shrimp used commercially, both in the United States and Europe, are packed in the southern states and the development of the shrimp industry has largely centered in and around methods learned, adopted and used in the City of Biloxi and State of Mississippi; that from this city has gone outposts to other parts of the southern states resulting in a development of the shrimp industry at other points, but from time immemorial Biloxi has been known as the natural home of those persons who were most skilled in the catching, packing and canning of shrimp and oysters and most intimate with the details of the business; that the shrimp itself is a migratory shell fish that dwells in some quantities in all parts of the world but is peculiarly indigenous to the Gulf of Mexico; it being found in all the waters of the Gulf of Mexico, even miles away from the mainland or shore; that although native shrimpers have studied the presence of these shrimp for the past fifty years there has arisen no definite theory as to the place where they spawn or the conditions of their incubation and no physical reason can be given for their presence in one part of the Gulf as against their lack of presence in another of the Gulf, but for some reason unknown to man after the shrimp reach a commercial size they find the waters of the State of Louisiana in that part of the state called the Louisiana [fol. 83] Marsh best adapted to their adult existence and for this reason in the early fall these shrimp can be found in the waters of the Louisiana marsh in greater quantities than anywhere else in the Mexican Gulf Coast. This marsh, comprising the parishes of St. Bernard and Plaquemine, extends for miles east from the Mississippi River and away from the small strip of alluvion highland that constitutes

the farming section of the above parishes. In normal tide the marsh is a flat uncovered by water, but in extraordinary high tide the entire marsh except the grass is covered with water, and during the hurricane tide the waters of the Gulf sweep inland almost to the banks of the Mississippi River, the marsh being scattered throughout its entire length is a natural breeding place for what is called the salt water mosquito and another very vicious insect locally known as a green-head. The presence of these two insects make it impossible for any human to dwell in this marsh unless he be so native to the soil and so acclimated to the action of these insects that he can suffer and stand a continuous attack of these insects, which is sufficient to drive the ordinary man momentarily insane. For this reason no towns or hamlets have sprung up in the two parishes that, in the opinion of affiant, are large enough to give the excess of female and adult labor necessary to operate successfully a shrimp and oyster canning plant, these plants requiring at certain stated seasons a very large number of operators; however, the work is so irregular and the labor turn-over so heavy that it would be impossible to secure this labor, unless it was the labor in excess of the natural requirements of the ordinary town that could at a moment's notice, be secured when wanted. The labor, although that of children, women and elderly men, is highly skilled and must come from years of association with the picking of shrimp. The ordinary woman unacquainted with the picking of shrimp, being unable to pick or shell even as much as one-fifth of that of skilled persons and as these laborers work piece work it [fol. 84] is unable to hold them unless they are skilled enough to earn a reasonable pay.

That affiant further says, that for years past it has been the habit and custom of Biloxi fishermen to go to the Louisiana Marsh and there catch fish and shrimp in small boats, which shrimp were in turn sold to a freight boat belonging to a factory operator either of Louisiana or Mississippi; likewise a large number of hardy fishermen living in the parishes above mentioned would catch shrimp in small boats and sell these shrimp either to the Biloxi boats or the representatives of the few Louisiana factories. The ability to carry these shrimp to Biloxi resulted in a keen competition among the various factory owners for their purchase of these shrimp and kept the price of shrimp high enough

to pay both natives and non-residents a reasonable wage for their daily arduous task. That this was the result of competition is shown by the fact that last year the average price of shrimp in Louisiana was $9.00 per barrel, whereas in the state of Alabama, where no such competition was allowed, the fishermen received $5.00 or $6.00 per barrel for identical shrimp. These shrimp, after being caught, were then transported to Biloxi and packed in Biloxi, Biloxi being about forty or fifty miles distant from the marsh across a body of quiet water, and also being located on a high, sandy shore with an abundance of very finest of water and with a climate that is noted throughout the United States for its healthfulness. The living conditions being so exceilent, as well as the other attractions such as schools, etc., brought to Biloxi large numbers of persons who were willing to work at one business a part of the time and during the rush season to assist in the packing of shrimp, thereby producing at all times an abundance of labor without which the average shrimp factory cannot be successful. These shrimp, [fol. 85] after being brought to Biloxi and canned, are shipped to all parts of the United States, some of the shrimp being shipped to various countries of Europe, and practically all of the shrimp, regardless of same being packed in Biloxi or in Louisiana, become the object of a widely scattered interstate commerce, every state in the Union and nearly every foreign land drawing on this supply for a part of the shrimp used by it.

Affiant further states, that while during the last past few years a number of factories have successfully operated, canning shrimp on the western banks of the Mississippi River, that for the past twenty-five years there has been no successful operation of canning plants on the eastern bank of the Mississippi River. During that period of time numerous persons, both from Louisiana and from Biloxi, have attempted to operate these plants but due to the inability to secure proper labor, the natural viciousness of the climate, the poor water conditions, none of these plants have continued under a long successful management by any one person, and while some of the plants are in existence now that have operated for years past they have operated through a series of managements and mishaps going from one hand to another and affiant knows of no plant, except

that of the Caernovan Packing Company that has had a continued successful existence and this plant was wiped out during the present summer by reason of the fact that the State of Louisiana used that part of St. Bernard Parish as a spillway for the Mississippi River, a large part of another, Plaquamine Parish, being a permanent spillway for the Mississippi River, so that during flood times the waters of the Mississippi flow almost continuously over a part of these parishes and at this time affiant is informed that a plan is being formed in New Orleans for continuing the above spillway where the packing plant is located,

That in affiant's opinion, it would not be possible to successfully can and pack shrimp in that part of Louisiana [fol. 86] known to himself and his business associates and any effort made to comply with the present Louisiana shrimp law would, in the opinion of affiant, largely injure and destroy his business in Biloxi, Mississippi, and result in not only an unsatisfactory operation in Louisiana, but in compelling affiant and his associates to live under conditions which would be largely injurious and destructive to their health and future happiness.

That Foster-Fountain Company, Inc. plant and its equipment is worth at least $125,000.00 and that the plant and equipment of the Sea Food Company, in the opinion of affiant, is worth $150,000.00. That the effect of the continued operation of the Louisiana shrimp law would be largely to destroy the value of the above plants and equipment and its present immediate effect would be to prevent affiant Foster Fountain Company, Inc., and the Sea Food Company and others from carrying out the contract referred to in the bill of complaint and other contracts and from being able to successfully conduct their interstate business so as to satisfy the demands and requirements of customers in all parts of the United States who have ordered shrimp from both affiant and the Sea Food Company. That its further effect would be to destroy or injure the means of livelihood of at least three or four thousand people in the city of Biloxi, comprising some eight hundred families, virtually compelling these people to sacrifice their homes in Biloxi, Mississippi, at a loss and to move themselves and families to a state and to a locality where the social and health conditions in no wise can compare to that of

Biloxi. That those people's lives have been lived right around packing houses and packing plants and that they know no other way in which to make a living. That there are no local industries in Biloxi that could accommodate them in the future were the packing plants removed or injured, and the second effect of the Louisiana law and its enforcement would be to tear these people from their native soil and require them to commence an adventurous existence in the marshes of the state of Louisiana that would [fol. 87] injure their children both physically and morally and destroy their home ties that have been created over a period of years.

Affiant further states that, in his opinion, and in the opinion of other men who have spent a lifetime in this business, no*t* object of conservation is intended by the shrimp law herein referred to as these shrimp, being migratory, come each year in renewed quantities to the Louisiana Marsh, and there is no provision in the act complained of that in anywise assists the State of Louisiana in augmenting the amount of shrimp within its borders, nor is there any necessity for these shrimp as a food for the people of the State of Louisiana as more than ninety-five per cent of all shrimp caught in the State of Louisiana are either packed and canned and shipped out of the State, or shipped out of the State in the raw state.

That affiant is informed and believes that the conservation officials of the State of Louisiana recognize this fact and agree to this condition by allowing certain persons in Louisiana to ship from the State by express shrimp with the hulls on after said shrimp have had their heads removed, this being what is called the raw shrimp business.

Affiant further says that the amount of the hulls produced for fertilizer is negligible; that while some thirty or forty per cent of the hulls are dried and made into shrimp bran in the State of Louisiana that this bran is immediately shipped from the State in interstate commerce and used by fertilizer companies in other states, but as a matter of fact the entire shrimp bran business is a negligible part of the shrimp industry, in the whole of the United States the yearly output being valued at less than one per cent of the shrimp output, but affiant further states that as a general rule the shrimp hulls and heads serve no useful purpose

but are thrown into the bayous and bays of the State of Louisiana to be then destroyed by crabs and other fish.

And further deponent sayeth not.

L. O. Johnson.

Sworn to and subscribed before me, this the 23 day of September, A. D. 1927.

A. S. Greyes,
Notary Public.

My commission expires 3-14-1930.

[fol. 88] Affidavit of Ernest Desporte, Jr., on Behalf of Plaintiff—Filed October 26, 1927.

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public duly commissioned and qualified under the laws of the State of Mississippi to act in the City of Biloxi, Harrison County, Mississippi, Ernest Desporte, who, after the said Ernest Desporte had been by me duly sworn, did depose as follows, to-wit:

That he, the said affiant, is a resident of Biloxi, Mississippi, and has resided in said city and State for the last thirty-nine years:

That the affiant is thirty-nine years old and for the past twenty years has been intimately acquainted with the shrimp and oyster packing and canning business in the city of Biloxi, Mississippi, for the last ten years having been the director and manager of Desporte Packing Company, one of the largest packing houses on the Mississippi Gulf Coast; that as such manager and director it has been his duty to investigate the shrimp industry beginning with the catching of said shrimp and their habits, etc. and ending with the packing and selling of said shrimp; that in gaining this information he had made personal inspections of the fishing grounds, has talked to hundreds of men engaged in the fishing business and has observed the operation of nearly every plant packing shrimp in the State of Mississippi and on the eastern banks of the Mississippi River in the State of Louisiana;

[fol. 89] That affiant is acquainted with the bays, sounds and inlets in Louisiana where shrimp are caught and with the habits, customs and business methods of the native shrimpers in Louisiana who catch said shrimp, as well as of the Mississippi shrimpers who engage in a like business.

Therefore, from the above information in possession of affiant, affiant does further depose and say: that the shrimp industry originating in the Southern States about fifty or sixty years ago has grown to be a business where at least forty or fifty plants or packing houses are engaged in the packing of shrimp in the Southern States; that with the exception of the Coast of Chile, most of the shrimp used commercially, both in the United States and Europe, are packed in the Southern States and the development of the shrimp industry has largely centered in and around methods learned, adopted and used in the City of Biloxi and State of Mississippi; that from this city has gone out outposts to other parts of the Southern States resulting in a development of the shrimp industry at other points, but from time immemorial Biloxi has been known as the natural home of those persons who were most skilled in the catching, packing and canning of shrimp and oysters and most intimate with the details of the business; that the shrimp itself is a migratory shell fish that dwells in some quantities in all parts of the world but is peculiarly indigenous to the Gulf of Mexico, it being found in all the waters of the Gulf of Mexico, even miles away from the mainland or shore; that although native shrimpers have studied the presence of these shrimp for the past fifty years there has arisen no definite theory as to the place where they spawn or the conditions of their incubation as no physical reason can be given for their presence in one part of the Gulf as against their lack of presence in another of the Gulf, but for some reason unknown to man after the shrimp reach a commercial size they find the waters of the State of Louisiana in that part of the State called the Louisiana Marsh best [fol. 90] adapted to their adult existence and for this reason in the early fall these shrimp can be found in the waters of the Louisiana marsh in greater quantities than any where else in the Mexican Gulf Coast. This marsh, comprising the parishes of St. Bernard and Plaquamine, extends for miles east from the Mississippi River and

away from the small strip of alluvian highland that constitutes the farming section of the above parishes. In normal tide the marsh is a flat uncovered by water, but in extraordinary high tide the entire marsh except the grass is covered with water, and during hurricane tide the waters of the Gulf sweep inland almost to the banks of the Mississippi River; the marsh being scattered throughout its entire length is a natural breeding place of what is called the salt water mosquito and another very vicious insect locally known as a green-head. The presence of these two insects make it impossible for any human to dwell in this marsh unless he be so native to the soil and so acclimated to the action of these insects that he can suffer and stand a continuous attack of these insects, which is sufficient to drive the ordinary man momentarily insane. For this reason no towns or hamlets have sprung up in the two parishes that, in the opinion of affiant, are large enough to give the excess of female and adult labor necessary to operate successfully a shrimp and oyster canning plant, these plants requiring at certain stated seasons a very large number of operators; however, the work is so irregular and the labor turn-over so heavy that it would be impossible to secure this labor, unless it was the labor in excess of the natural requirements of the ordinary town that could, at a moment's notice, be secured when wanted. The labor, although that of children, women and elderly men, is highly skilled and must come from years of association with the picking of shrimp, the ordinary woman, unacquainted with the picking of shrimp, being unable to pick or shell even as much as one-fifth of that of skilled persons and as [fol. 91] these laborers work piece work it is unable to hold them unless they are skilled enough to earn a reasonable pay.

That affiant further says, that for years past it has been the habit and custom of Biloxi fishermen to go to the Louisiana Marsh and there catch fish and shrimp in small boats, which shrimp were in turn sold to a freight boat belonging to a factory operator either of Louisiana or Mississippi; likewise a large number of hardy fishermen living in the parishes above mentioned would catch shrimp in small boats and sell these shrimp either to the Biloxi boats or the representative of the few Louisiana factories. The

ability to carry these shrimp to Biloxi resulted in a keen competition among the various factory owners for their purchase of these shrimp and kept the price of shrimp high enough to pay both natives and non-residents a reasonable wage for their daily arduous task. That this was the result of competition is shown by the fact that last year the average price of shrimp in Louisiana was $9.00 per barrel, whereas in the state of Alabama, where no such competition was allowed, the fisherman received $5.00 or $6.00 per barrel for identical shrimp. These shrimp, after being caught, were then transported to Biloxi and packed in Biloxi, Biloxi being about forty or fifty miles distant from the marsh across a body of quiet water, and also being located on a high, sandy shore with an abundance of very finest of water and with a climate that is noted throughout the United States for its healthfulness. The living conditions being so excellent, as well as the other attractions such as schools, etc., brought to Biloxi large numbers of persons who were willing to work at one business a part of the time and during the rush season to assist in the packing of shrimp, thereby producing at all times an abundance of labor without which the average shrimp factory cannot be successful. These shrimp, after being [fol. 92] brought to Biloxi and canned, are shipped to all parts of the United States, some of the shrimp being shipped to various countries of Europe, and practically all of the shrimp, regardless of same being packed in Biloxi or in Louisiana, become the object of a widely scattered interstate commerce, every State in the Union and nearly every foreign land drawing on this supply for a part of the shrimp used by it.

Affiant further states, that while during the last past few years a number of factories have successfully operated, canning shrimp on the western banks of the Mississippi River, that for the past twenty-five years there has been no successful operation of canning plants on the eastern bank of the Mississippi River. During that period of time numerous persons, both from Louisiana and from Biloxi, have attempted to operate these plants but due to the inability to secure proper labor, the natural viciousness of the climate, the poor water conditions, none of these plants have continued under a long successful management by any

one person, and while some of the plants are in existence now that have operation for years past they have operated through a series of managements and mishaps going from one hand to another and affiant knows of no plant, except that of Caernovan Packing Company that has had a continued successful existence and this plant was wiped out during the present summer by reason of the fact that the State of Louisiana used that part of St. Bernard Parish as a spillway for the Mississippi River, a large part of another, Plaquamine Parish, being a permanent spillway for the Mississippi River, so that during flood times the waters of the Mississippi Flow almost continuously over a part of these parishes and at this time affiant is informed that a plan is being formed in New Orleans for continuing the above spillway where the packing plant is located.

That in affiant's opinion, it would not be possible to successfully can and pack shrimp in that part of Louisiana known to himself and his business associates and any effort [fol. 93] made to comply with the present Louisiana shrimp law would, in the opinion of affiant, largely injure and destroy his business in Biloxi, Mississippi, and result in not only an unsatisfactory operation in Louisiana, but in compelling affiant and his associates to live under conditions which would be largely injurious and destructive to their health and future happiness.

That Foster Fountain Company, Inc. plant and its equipment is worth at least $125,000.00 and that the plant and equipment of the Sea Food Company in the opinion of affiant, is worth $150,000.00. That the effect of the continued operation of the Louisiana shrimp law would be largely to destroy the value of the above plants and equipment and its present immediate effect would be to prevent affiant Foster Fountain Company, Inc. and the Sea Food Company and others from carrying out the agreement referred to in the bill of complaint and other contracts and from being able to successfully conduct their interstate business so as to satisfy the demands and requirements of customers in all parts of the United States who have ordered shrimp from both affiant and the Sea Food Company. That its further effect would be to destroy or injure the means of livelihood of at least three or four thou-

sand people in the city of Biloxi, comprising some eight hundred families, virtually compelling these people to sacrifice their homes in Biloxi, Mississippi, at a loss and to move with themselves and families to a state and to a locality where the social and health conditions in no wise can compare to that of Biloxi. That these people's lives have been lived right around packing houses and packing plants and that they know no other way in which to make a living. That there are no local industries in Biloxi that could accommodate them in the future were the packing plants removed or injured, and the second effect of the Louisiana law and its enforcement would be to tear these people from their native soil and require them to commence an adventurous existence in the marshes of the state of Louisiana that would injure their children both physically [fol. 94] and morally and destroy their home ties that have been created over a period of years.

Affiant further states that, in his opinion, and in the opinion of other men who have spent a lifetime in this business, not object of conservation is intended by the shrimp law herein referred to as these shrimp, being migratory, come each year in renewed quantities to the Louisiana Marsh, and there is no provision in the act complained of that in anywise assists the state of Louisiana in augmenting the amount of shrimp within its borders, nor is there any necessity for these shrimp as a food for the people of the state of Louisiana as more than ninety-five per cent of all shrimp caught in the state of Louisiana are either packed and canned and shipped out of the state, or shipped out of the state in the raw state.

That affiant is informed and believes that the conservation officials of the State of Louisiana recognize this fact and agree to this condition by allowing certain persons in Louisiana to ship from the state by express shrimp with the hulls on after said shrimp have had their heads removed, this being what is called the raw shrimp business.

Affiant further says that the amount of the hulls produced for fertilizer is negligible; that while some thirty or forty per cent of the hulls are dried and made into shrimp bran in the state of Louisiana that this bran is immediately shipped from the state in interstate commerce and used by fertilizer companies in other states, but as a matter of

fact the entire shrimp bran business is a negligible part of the shrimp industry, in the whole of the United States the yearly output being valued at less than one per cent of the shrimp output, but affiant further states that as a general rule the shrimp hulls and heads serve no useful purpose but are thrown into the bayous and bays of the state of Louisiana to be then destroyed by crabs and other fish.

And further deponent sayeth not.

(Sig.) Ernest Desporte, Jr.

Sworn to and subscribed before me, this the 26 day of September, A. D. 1927.

(Sig.) A. S. Merero, Notary Public. (Seal.)

[fol. 95] AFFIDAVIT OF O. G. SWETMAN, ON BEHALF OF PLAINTIFF—Filed Oct. 26, 1927

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, O. G. Swetman, who being by me first duly sworn did depose and say:

That he is Cashier of the Peoples Bank of Biloxi, Mississippi, and as an employee of said bank has for the past twenty years had an intimate acquaintance with the shrimp and oyster business in the State of Mississippi and the State of Louisiana, said bank having for a large number of years handled business transactions with the largest concerns doing business in both places.

That by reason of these business dealings he has studied this industry and is fully familiar with its financial and economical side.

Affiant further states that there is invested in this business in the City of Biloxi directly approximately a million and a quarter dollars, and indirectly several millions of dollars.

That there is situated in Biloxi about sixteen factories packing shrimp and oysters, employing during the season between four and five thousand people, and living off of the

earnings of the shrimp industry are approximately seven or eight thousand people.

Affiant further states that at the opening of the 1927 shrimp season all of these factories were shut down, re- [fol. 96] sulting in the loss of employment to thousands of people, many of whom were women and children without other means of support or employment.

That this condition was caused by the presence in the waters of the State of Louisiana of the enforcement officers of the Conservation Department of Louisiana, who were threatening to arrest any fishermen who violated the Louisiana shrimp act and confiscating the valuable boats engaged in this business.

That immediately upon the granting of the injunction in the above case, this condition was remedied by means of said injunction, thousands of people have been able to make a living and hundreds of cases of dire distress and want both in the eastern part of Louisiana and the western part of Mississippi have been prevented.

That the shrimp and oyster business is a very competitive one and almost the entire profit goes to the catchers of this article of commerce, and for this reason there has been numerous attempts made to monopolize the business and in the opinion of the affiant the sole purpose of the so-called Louisiana shrimp act was a desire on the part of a few canners of shrimp who have plants in both Louisiana and Mississippi to prevent the entrance into Louisiana of competition in the purchase of these shrimp.

That no other purpose could be served by the said act as the supply of shrimp in Louisiana is greater than the possible demand and the head and hulls are of very small value as shown by this case.

That the only man who now uses these hulls in manufacturing fertilizer shut down a plant in Biloxi where an unlimited amount of hulls could have been obtained, and changed from manufacturing fertilizer from shrimp hulls to manufacturing the same from other substances, mixed with a small part of shrimp hulls.

Affiant further states that if said law was continued in force that it would create a monopoly in favor of those [fol. 97] engaged in packing shrimp west of the Mississippi River, to such an extent that the price of shrimp could

be increased in all parts of the United States, as the chief competition to the packers in the above territory comes from shrimp packers on the coast of Mississippi.

Affiant further states that the coast of Mississippi is peculiarly adapted to the canning of shrimp on account of its clear pure water, but that it is not practical to manufacture shrimp west of the Mississippi River in the State of Louisiana, for the reason that there is a greater lack of community life and the absence of pure water needed in the manufacture of these shrimp to make the same of high market value.

Affiant further states on information and belief that there is an increasing demand for what is known as raw shrimp, that is, shrimp packed in ice and shipped to various parts of the United States to be used by hotels and restaurants in their raw state.

That a great many of the persons engaged in this business are citizens of Louisiana as well as citizens of Mississippi, and this industry cannot be carried on unless the Louisiana shrimp law is either disobeyed or held invalid, and affiant is informed and believes that the industry is now being carried on in Louisiana in increasing size.

And further affiant sayeth not.

(Sig.) O. G. Swetman.

Sworn to and subscribed before me, this the 21st day of October, A. D. 1927.

(Sig.) Antonio Perisich, Notary Public. (Seal.)

[fol. 98] AFFIDAVIT OF C. B. FOSTER ON BEHALF OF PLAINTIFF—Filed Oct. 26, 1927.

[Title omitted.]

Personally appeared before me, the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, C. B. Foster who being by me first duly sworn did depose and say:

That he is President of the C. B. Foster Packing Company, a corporation domiciled at Biloxi, Mississippi, and engaged in packing shrimp and oysters.

That said corporation also has a plant on the West Bank of the Mississippi River engaged in packing shrimp.

That on account of the odors and other obnoxious features of shrimp heads and hulls, affiant has been hindered in the packing of said shrimp. In disposing of said shrimp heads and hulls that he has tried to sell said shrimp heads and hulls in the open market in Louisiana but found no purchaser therefor, and knowing that one large plant in Louisiana had a grinding machine or drier offered to give his shrimp heads and hulls to the plant if said plaint would remove said heads and hulls, but this offer was refused, and at the present time at a loss and expense, affiant is compelled to haul said shrimp hulls away from his plant on a barge and dump them into some of the bayous of Louisiana.

Affiant further states upon information and belief that there are only six shrimp hull dryers in Louisiana, one at Wistmego one at Lopitte, one at Green Meadow, one at Violet, and one at Harvey and one at Homer, and that the shrimp hulls and heads after being dried are almost entirely shipped in the raw state from the State of Louisiana to [fol. 99] other states, principally to Biloxi, Mississippi.

And further affiant sayeth not.

(Sig.) C. B. Foster.

Sworn to and subscribed before me, this 22nd day of October, A. D. 1927.

(Sig.) Eugene Peresich, Notary Public. (Seal.)

[fol. 100] AFFIDAVIT OF VICTOR ELLIS ON BEHALF OF PLAINTIFF—Filed Oct. 26, 1927

[Title omitted.]

Personally appeared before me, the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, Victor Ellis who being by me first duly sworn did depose and say:

That he is a resident of Biloxi, Harrison County, Mississippi, and has been engaged in catching shrimp as a fisherman and catching oysters for the last ten years or more.

That he is familiar with the mode and methods of cleaning and canning shrimp in the State of Louisiana, and has been familiar with the methods used for the past ten years.

That affiant knows of his own knowledge that with the exception of two plants in Louisiana, that the shrimp hulls and heads are a nuisance to the operators of packing plants and that generally these heads and hulls are placed on barges and boats and at an expense to owners of the plants are carried away and dumped into the lakes and bayous of Louisiana.

That these shrimp hulls and heads have no saleable value in Louisiana for the reason that in a raw state they are too offensive to be used as a fertilizer, and after being dried their sale value is small, and the demand for this type of fertilizer is not large.

Affiant further states that they know of no plant on the East bank of the Mississippi River or lying East of the Mississippi River where any effort is made to conserve the shrimp heads and hulls.

[fol. 101] And further affiant sayeth not.

(Sig.) Victor Ellis.

Sworn to and subscribed before me, this 22nd day of October, A. D. 1927.

(Sig.) Eugene Pereisich, Notary Public. (Seal.)

[fol. 102] AFFIDAVIT OF R. HART CHINN ON BEHALF OF PLAINTIFF—Filed Oct. 26, 1927

[Title omitted.]

Personally appeared before me, the undersigned authority, a Notary Public duly commissioned and qualified under the laws of the State of Mississippi to act in the City of Biloxi, Harrison County, Mississippi, R. Hart Chinn, who after the said R. Hart Chinn had been by me duly sworn, did depose as follows, to-wit:

That he, the said affiant, is a resident of Biloxi, Mississippi, and has resided in said city and state for the last thirty years;

That the affiant is thirty-nine years old and for the past twenty years has been intimately acquainted with the shrimp and oyster packing and canning business in the City of Biloxi, Mississippi, for the last seven years having been the director and manager of Foster Fountain Company, Inc., one of the largest packing houses on the Mississippi Gulf Coast; that as such manager and director it has been his duty to investigate the shrimp industry beginning with the catching of said shrimp and their havits, etc. and ending with the packing and selling of said shrimp; that in gaining this information he has made personal inspections of the fishing grounds, has talked to hundreds of men engaged in the fishing business and has observed the operation of nearly every plant packing shrimp in the state of Mississippi and on the eastern banks of the Mississippi River in the State of Louisiana;

[fol. 103] That affiant is acquainted with the bays, sounds and inlets in Louisiana where shrimp are caught and with the habits, customs and business methods of the native shrimpers in Louisiana who catch said shrimp, as well as of the Mississippi shrimpers who engage in a like business.

Therefore, from the above information in posession of affiant, affiant does further depose and say: that the shrimp industry originating in the Southern States about fifty or sixty years ago has grown to be a business where at least forty or fifty plants or packing houses are engaged in the packing of shrimp in the southern states; that with the exception of the Coast of Chile, most of the shrimp used commercially, both in the United States and Europe, are packed in the southern states and the development of the shrimp industry has largely centered in and around methods learned, adopted and used in the City of Biloxi and State of Mississippi; that from this city has gone out outposts to other parts of the southern states resulting in a development of the shrimp industry at other ports, but from time immemorial Biloxi has been known as the natural home of those persons who were most skilled in the catching, packing and canning of shrimp and oysters and most intimate with the details of the business; that the shrimp itself is a migratory shell fish that dwells in some quantities in all parts of the world but is peculiarly indigenous to the Gulf of Mexico; it being found in all the waters of the Gulf of Mexico, even miles away from the

mainland or shore; that although native shrimpers have studied the presence of these shrimp for the past fifty years there has arisen no definite theory as to the place where they spawn or the conditions of their incubation and no physical reason can be given for their presence in one part of the Gulf as against their lack of presence in another — of the Gulf, but for some reason unknown to man after the shrimp reach a commercial size they find the waters of the State of Louisiana in that part of the state called the Louisi- [fol. 104] ana Marsh best adapted to their adult existence and for this reason in the early fall these shrimp can be found in the waters of the Louisiana marsh in greater quantities than anywhere else in the Mexican Gulf Coast. This marsh, comprising the parishes of St. Bernard and Plaquemine, extends for miles east from the Mississippi River and away from the small strip of alluvion highland that constitutes the farming section of the above parishes. In normal tide the marsh is a flat uncovered by water, but in extraordinary high tide the entire marsh except the grass is covered with water, and during hurricane tide the waters of the Gulf sweep inland almost to the bank*ds* of the Mississippi River, the marsh being scattered throughout its entire length is a natural breeding place of what is called the salt water mosquito and another very vicious insect locally known as a green-head. The presence of these two insects make- it impossible for any human to dwell in this marsh unless he be so native to the soil and so acclimated to the action of these insects that he can suffer and stand a continuous attack of these insects, which is sufficient to drive the ordinary man momentarily insane. For this reason no towns or hamlets have sprung up in the two parishes that, in the opinion of affiant, are large enough to give the excess of female and adult labor necessary to operate successfully a shrimp and oyster canning plant, these plants requiring at certain stated seasons a very large number of operators; however, the work is so irregular and the labor turn-over so heavy that it would be impossible to secure this labor, unless it was the labor in excess of the natural requirements of the ordinary town that could, at a moment's notice, be secured when wanted. The labor, although that of children, women and elderly men, is highly skilled and must come from years of association with the picking of shrimp. The ordinary woman, unacquainted

with the picking of shrimp, being unable to pick or shell even as much as one-fifth of that of skilled persons and as [fol. 105] these laborers work piece work it is unable to hold them unless they are skilled enough to earn a reasonable pay.

That affiant further says, that for years past it has been the habit and custom of Biloxi fishermen to go to the Louisiana Marsh and there catch fish and shrimp in small boats, which shrimp were in turn sold to a freight boat belonging to a factory operator either of Louisiana or Mississippi; likewise a large number of hardy fishermen living in the parishes above mentioned would catch shrimp in small boats and sell these shrimp either to the Biloxi boats or the representative of the few Louisiana factories. The ability to carry these shrimp to Biloxi resulted in a keen competition among the various factory owners for their purchase of these shrimp and kept the price of shrimp high enough to pay both natives and non-residents a reasonable wage for their daily arduous task. That this was the result of competition is shown by the fact that last year the average price of shrimp in Louisiana was $9.00 per barrel, whereas in the state of Alabama, where no such competition was allowed, the fisherment received $5.00 or $6.00 per barrel for identical shrimp. These shrimp, after being caught, were then transported to Biloxi and packed in Biloxi, Biloxi being about forty or fifty miles distant from the marsh across a body of quiet water, and also being located on a high sandy shore with an abundance of very finest of water and with a climate that is noted throughout the United States for its healthfulness. The living conditions being so excellent, as well as the other attractions such as schools, etc., brought to Biloxi large numbers of persons who were willing to work at one business a part of the time and during the rush season to assist in the packing of shrimp, thereby producing at all times an abundance of labor without which the average shrimp factory cannot be successful. These shrimp, after being [fol. 106] brought to Biloxi and canned, are shipped to all parts of the United States, some of the shrimp being shipped to various countries of Europe, and practically all of the shrimp, regardless of same being packed in Biloxi or in Louisiana, become the object of a vitally scattered

interstate commerce, every state in the Union and nearly every foreign land drawing on this supply for a part of the shrimp used by it.

Affiant further states, that while during the last past few years a number of factories have successfully operated, canning shrimp on the western banks of the Mississippi River, that for the past twenty-five years there has been no successful operation of canning plants on the eastern bank of the Mississippi River. During that period of time numerous persons, both from Louisiana and from Biloxi, have attempted to operate these plants but due to the inability to secure proper labor, the natural viciousness of the climate, the poor water conditions, none of these plants have continued under a long successful management by any one person, and while some of the plants are in existence now that have operated for years past they have operated through a series of managements and mishaps going from one hand to another and affiant knows of no plant, except that of Caernovan Packing Company that has had a continued successful existence and this plant was wiped out during the present summer by reason of the fact that the State of Louisiana used that part of St. Bernard Parish as a spillway for the Mississippi River, a large part of another, Plaquemine Parish, being a permanent spillway for the Mississippi River, so that during flood time the waters of the Mississippi flow almost continuously over a part of these parishes and at this time affiant is informed that a plan is being formed in New Orleans for continuing the above spillway where the packing plant is located.

That in affiant's opinion, it would not be possible to successfully can and pack shrimp in that part of Louisiana [fol. 107] known to himself and his business associates and any effort made to comply with the present Louisiana shrimp law would, in the opinion of affiant, largely injure and destroy his business in Biloxi, Mississippi, and result in not only an unsatisfactory — in Louisiana, but in compelling affiant and his associates to live under conditions which would be largely injurious and destructive to their health and future happiness.

That affiant's plant and its equipment is worth at least $125,000.00 and that the plant and equipment of the Sea Food Company, in the opinion of affiant, is worth $150,000.00. That the effect of the continued operation of the

Louisiana shrimp law would be largely to destroy the value of the above plants and equipment and its present immediate effect would be to prevent affiant and the Sea Food Company from carrying out the agreed- referred to in the bill of complaint and from being able to successfully conduct their interstate business so as to satisfy the demands and requirements of customers in all parts of the United States who have ordered shrimp from both affiant and the Sea Food Company. That its further effect would be to destroy or injure the means of livelihood of at least three or four thousand people in the city of Biloxi, comprising some eight hundred families, virtually compelling these people to sacrifice their homes in Biloxi, Mississippi, at a loss and to move with themselves and families to a state and to a locality where the social and health conditions in no wise can compare to that of Biloxi. That these people's lives have been lived right around packing houses and packing plants and that they know no other way in which to make a living. That there are no local industries in Biloxi that could accommodate them in the future were the packing plants removed or injured, and the second effect of the Louisiana law and its enforcement would be to tear these people from their native soil and require them to commence an adventurous existence in the marshes of the state [fol. 108] of Louisiana that would injure their children both physically and morally and destroy their home ties that have been created over a period of years.

Affiant further says that if he attempts to violate the law that he has been notified that not only will his men be imprisoned for the violation of the law, but that valuable boats owned by affiant and Sea Food Company will be confiscated and lost, each of these boats being of a value in the neighborhood of $4,000.00.

Affiant further states that, in his opinion, and in the opinion of other men who have spent a lifetime in this business, not object to conservation is intended by the shrimp law herein referred to as these shrimp, being migratory, come each year in renewed quantities to the Louisiana marsh, and there is no provision in the act complained of that in anywise assists the state of Louisiana in augmenting the amount of shrimp within its borders, nor is there any necessity for these shrimp as a food for the people of the state of Louisiana as more than ninety-five

per cent of all shrimp caught in the State of Louisiana are either packed and canned and shipped out of the state, or shipped out of the state in the raw state.

That affiat is informed and believes that the conservation officials of the State of Louisiana recognize this fact and agree to this condition by allowing certain persons in Louisiana to ship from the state by express shrimp with the hulls on after said shrimp have had their heads removed, this being what is called the raw shrimp business, and to affiant's own knowledge, while the above law was in process of being passed by the legislature of the state of Louisiana, the representatives of these interests desiring its passage publicly stated, at a hearing before the Louisiana Legislature, that the object of the passage of this bill was not for the purpose of conserving to the people of Louisiana either the supply of shrimp or any fertilizer resulting from the hulls and heads of said shrimp, but with the purpose and object of compelling non-residents of Louisiana to remove from Louisiana to en-[fol. 109] gage in the packing or canning of shrimp, thereby increasing the industrial life of Louisiana.

Affiant further says that the amount of the hulls produced for fertilizer is negligible; that while some forty or fifty per cent of the hulls are dried and made into shrimp bran in the state of Louisiana that this bran is immediately shipped from the state in interstate commerce and used by fertilizer companies in other states, but as a matter of fact the entire shrimp bran business is a negligible part of the shrimp industry, in the whole of the United States the yearly output being valued at less than one per cent of the shrimp output, but affiant further states that as a general rule the shrimp hulls and heads serve no useful purpose but are thrown into the bayous and bays of the state of Louisiana to be then destroyed by crabs and other fish.

Affiant further states that at the present time the shrimp packing part of both his and the Sea Food Company's plant is practically closed and the damage being caused thereby is large and continuous and without a possible chance of the loss ever being regained by affiants, and therefore at this time his loss by reason of the enforcement of this law is irreparable.

Affiant further states that before the passage of the law herein complained of, and irrespective of same, he had made a thorough and complete study of the economical conditions prevailing over the entire state of Louisiana with the view of placing a plant for the packing of shrimp in Louisiana, and that, as a result of this study, he decided that no operation of such a plant by him in said state could be economical or so as to yield a profit on the money invested by him in the operation of said business.

And further deponent sayeth not.

(Sig.) R. Hart Chinn.

Sworn to and subscribed before me, on this the — day of September, A. D. 1927.

(Sig.) Antonio Perisich, Notary Public. (Seal.)

[fol. 110] AFFIDAVIT OF OSCAR OLIVER ON BEHALF OF PLAINTIFF—Filed Oct. 26, 1927

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, Oscar Oliver who being by me first duly sworn did depose and say:

That he is a resident of Biloxi, Harrison County, Mississippi, and has been engaged in catching shrimp as a fisherman and catching oysters for the last ten years or more.

That he is familiar with the mode and methods of cleaning and canning shrimp in the State of Louisiana, and has been familiar with the methods used for the past ten years.

That affiant knows of his own knowledge that without exceptions of two plants in Louisiana, that the shrimp hulls and heads are a nuisance to the operators of packing plants and that generally these heads and hulls are placed on barges and boats and at an expense to owners of the plants are carried away and dumped into the lakes and bayous of Louisiana.

That these shrimp hulls and heads have no saleable value in Louisiana for the reason that in a raw state they

are too offensive to be used as a fertilizer and after being dried their sale value is small, and the demand for this type of fertilizer is not large.

Affiant further states that they know of no plant on the East bank of the Mississippi River or lying East of the Mississippi River where any effort is made to con-
[fol. 111] serve the shrimp heads and hulls.

And further affiant sayeth not.

(Sgd.) Oscar Oliver

Sworn to and subscribed before me, this the 22nd day of October, A. D. 1927.

(Sgd.) Eugene Peresich, Notary Public. (Seal.)

[fol. 112] AFFIDAVIT OF LEWIS GARLOTTE, ON BEHALF OF PLAINTIFF—Filed Oct. 26, 1927

[Title omitted.]

Personally appeared before me, the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, Lewis Garlotte who being by me first duly sworn did depose and say:

That he is a resident of Biloxi, Harrison County, Mississippi, and has been engaged in catching shrimp as a fisherman and catching oysters for the last ten years or more.

That he is familiar with the mode and methods of cleaning and canning shrimp in the State of Louisiana, and has been familiar with the methods used for the past ten years.

That affiant knows of his own knowledge that without exceptions of two plants in Louisiana, that the shrimp hulls and heads are a nuisance to the operators of packing plants and that generally these heads and hulls are placed on barges and boats and at an expense to owners of the plants are carried away and dumped into the lakes and bayous of Louisiana.

That these shrimp hulls and heads have no saleable value in Louisiana for the reason that in a raw state they are too offensive to be used as a fertilizer and after being dried their sale value is small, and the demand for this type of fertilizer is not large.

Affiant further states that they know of no plant on the East bank of the Mississippi River or lying East of the Mississippi River where any effort is made to conserve the shrimp heads and hulls.

[fol. 113] And further affiant sayeth not.

(Sgd.) Lewis Garlotte.

Sworn to and subscribed before me, this the 22nd day of October, A. D. 1927.

(Sgd.) Antonia Peresigh, Notary Public. (Seal.)

[fol. 114] AFFIDAVIT OF A. R. HEIDENHEIM, ON BEHALF OF PLAINTIFF—Filed Oct. 26, 1927.

[Title omitted.]

Personally appeared before me, the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, A. R. Heidenheim, who being by me first duly sworn did depose and say:

That she is Secty. and Treasurer of the Sea Food Company, a corporation domiciled at Biloxi, Mississippi, and engaged in packing shrimp and oysters.

That said corporation also has a plant on the West bank of the Mississippi River engaged in packing shrimp.

That on account of the odors and other obnoxious features of shrimp heads and hulls, affiant has been hindered in the packing of said shrimp. In disposing of said shrimp heads and hulls that she has tried to sell said shrimp heads and hulls in the open market in Louisiana but found no purchaser therefor, and knowing that one large plant in Louisiana had a grinding machine or dryer offered to give her shrimp heads and hulls to the plant if said plant would remove said heads and hulls, but this offer was refused, and at the present time at a loss and expense, affiant is compelled to haul said shrimp hulls away from her plant on a barge and dump them into some of the bayous of Louisiana.

Affiant further states upon information and belief that there are only two shrimp hull dryers in Louisiana, one at Algiers and one at Homer, and that the shrimp hulls and

heads after being dried are almost entirely shipped in the [fol. 115] raw state from the State of Louisiana to other states, principally to Biloxi, Mississippi.

And further affiant sayeth not.

(Sgd.) A. R. Heidenheim, Secy. & Treas.

Sworn to and subscribed before me, this the 22nd day of October, A. D. 1927.

(Sgd.) Eugene Peresich, Notary Public. (Seal.)

[fol. 116] AFFIDAVIT OF L. G. MOORE, ON BEHALF OF PLAINTIFF—Filed Oct. 26, 1927

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, L. G. Moore, who being by me first duly sworn did depose and say:

That he is a resident of Biloxi, Harrison County, Mississippi, and has been engaged in catching shrimp as a fisherman and catching oysters for the last ten years or more.

That he is familiar with the mode and methods of cleaning and canning shrimp in the State of Louisiana, and has been familiar with the methods used for the past ten years.

That affiant knows of his own knowledge that with the exception of two plants in Louisiana, that the shrimp hulls and heads are a nuisance to the operators of packing plants and that generally these heads and hulls are placed on barges and boats and at an expense to owners of the plants are carried away and dumped into the lakes and bayous of Louisiana.

That these shrimp hulls and heads have no saleable value in Louisiana for the reason that in a raw state they are too offensive to be used as a fertilizer and after being dried their sale value is small, and the demand for this type of fertilizer is not large.

Affiant further states that they know of no plant on the East bank of the Mississippi River or lying East of the

Mississippi River where any effort is made to conserve the [fol. 117] shrimp heads and hulls.

And further affiant sayeth not.

(Sgd.) L. G. Moore.

Sworn to and subscribed before me, this the 22nd day of October, A. D. 1927. (Sgd.) Eugene Peresich, Notary Public. (Seal.)

[fol. 118] AFFIDAVIT OF E. C. TONSMEIRE ON BEHALF OF PLAINTIFF—Filed Oct. 26, 1927

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, E. C. Tonsmeire, who being by me first duly sworn did depose and say:

That he is president of the First National Bank of Biloxi, Mississippi, and as an employee of said bank has for the past twenty years had an intimate acquaintance with the shrimp and oyster business in the State of Mississippi and the State of Louisiana, said bank having for a large number of years handled business transactions with the largest concerns doing business in both places.

That by reason of these business dealings he has studied this industry and is fully familiar with its financial and economical side.

Affiant further states that there is invested in this business in the City of Biloxi directly approximately a million and a quarter dollars, and indirectly several millions of dollars.

That there is situated in Biloxi about sixteen factories packing shrimp and oysters, employing during the season between four and five thousand people, and living off of the earnings of the shrimp industry are approximately seven or eight thousand people.

Affiant further states that at the opening of the 1927 shrimp season all of these factories were shut down, re- [fol. 119] sulting in the loss of employment to thousands

of people, many of whom were women and children without other means of support or employment.

That this condition was caused by the presence in the waters of the State of Louisiana of the enforcement officers of the Conservation Department of Louisiana, who were threatening to arrest any fishermen who violated the Louisiana shrimp act and confiscating the valuable boats engaged in this business.

That immediately upon the granting of the injunction in the above case, this condition was remedied by means of said injunction, thousands of people have been able to make a living and hundreds of cases of dire distress and want both in the eastern part of Louisiana and the western part of Mississippi have been prevented.

That the shrimp and oyster business is a very competitive one and almost the entire profit goes to the catchers of this article of commerce, and for this reason there has been numerous attempts made to monopolize the business and in the opinion of the affiant the sole purpose of the so-called Louisiana shrimp act was a desire on the part of a few canners of shrimp who have plants in both Louisiana and Mississippi to prevent the entrance into Louisiana of competition in the purchase of these shrimp.

That no other purpose could be served by the said act as the supply of shrimp in Louisiana is greater than the possible demand and the head and hulls are of very small value as shown by this case.

That the only man who now uses these hulls in manufacturing fertilizer shut down a plant in Biloxi where an unlimited amount of hulls could have been obtained, and changed from manufacturing fertilizer from shrimp hulls to manufacturing the same from other substances, mixed with a small part of shrimp hulls.

Affiant further states that if said law was continued in force that it would create a monopoly in favor of those [fol. 120] engaged in packing shrimp west of the Mississippi River, to such an extent that the price of shrimp could be increased in all parts of the United States, as the chief competition to the packers in the above territory comes from shrimp packers on the coast of Mississippi.

Affiant further states that the coast of Mississippi is peculiarly adapted to the canning of shrimp on account of its

clear pure water, but that it is not practical to manufacture shrimp west of the Mississippi River in the State of Louisiana, for the reason that there is a greater lack of community life and the absence of pure water needed in the manufacture of these shrimp to make the same of high market value.

Affiant further states on information and belief that there is an increasing demand for what is known as raw shrimp, that is, shrimp packed in ice and shipped to various parts of the United States to be used by hotels and restaurants in their raw state.

That a great many of the persons engaged in this business are citizens of Louisiana as well as citizens of Mississippi, and this industry cannot be carried on unless the Louisiana shrimp law is either disobeyed or held invalid, and affiant is informed and believes that the industry is now being carried on in Louisiana in increasing size.

And further affiant sayeth not.

(Sgd.) E. C. Tonsmeire.

Sworn to and subscribed before me, this the 21st day of October, A. D. 1927. (Sgd.) Antonia Peresich, Notary Public. (Seal.)

[fol. 121] AFFIDAVIT OF TONY WILLIAMS ON BEHALF OF PLAINTIFF—Filed October 26, 1927

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, Tony Williams who being by me first duly sworn did depose and say:

That he is a resident of Biloxi, Harrison County, Mississippi, and has been engaged in catching shrimp as a fishermen and catching oysters for the last ten years or more.

That he is familiar with the mode and methods of cleaning and canning shrimp in the State of Louisiana, and has been familiar with the methods used for the past ten years.

That affiant knows of his own knowledge that without exceptions of two plants in Louisiana, that the shrimp hulls and heads are a nuisance to the operators of packing plants and that generally these heads and hulls are placed on barges and boats and at an expense to owners of the plants are carried away and dumped into the lakes and bayous of Louisiana.

That these shrimp hulls and heads have no saleable value in Louisiana for the reason that in a raw state they are too offensive to be used as a fertilizer and after being dried their sale value is small, and the demand for this type of fertilizer is not large.

Affiant further states that they know of no plant on the East bank of the Mississippi River or lying East of the Mississippi River where any effort is made to conserve the [fol. 122] shrimp heads and hulls.

And further affiant sayeth not.

(Sgd.) Tony Williams.

Sworn to and subscribed before me, this the 22 day of October, A. D. 1927.

(Sgd.) Bert O. Gunn, Notary Public. (Seal.)

[fol. 123] [Title omitted]

AFFIDAVIT OF R. HART CHINN

Personally appeared before me, the undersigned authority, a Notary Public, in and for the City of Biloxi, Harrison County, Mississippi, R. Hart Chinn, a resident of Biloxi, Harrison County, Mississippi, who being by me first duly sworn did depose and say:

That he, affiant, is manager of the plaintiff corporation in the above styled case and is thoroughly familiar with all the facts set out and described in the bill of complaint filed in this case.

That the contract filed as a part of the bill of complaint in this case was regularly and legally executed by and between the Foster Fountain Company, Inc. and the Sea Food Company, and is, at the present time, a valid and legal contract.

That affiant would not have been able to carry out the terms of said contract with the so-called shrimp law of the State of Louisiana in force and effect, and prior to the time of the granting of the temporary injunction in this case, had been prevented from carrying out the terms of said contract, and unless an injunction granted in this case is continued, affiant will be by the Conservation Department of said Louisiana, prevent- from carrying out the terms of this contract by the confiscation of his boats and the arrest and imprisonment of the men operating said boats.

That said contract as aforesaid is now being complied with by affiant from shrimp caught in the State of Louisiana [fol. 124] and brought from said State to the State of Misissisip, where the same are packed and canned and delivered to the Sea Food Company as well as delivered to the Sea Food Company in their raw state.

Affiant further states of his own knowledge that he was present at a meeting of a committee of the Senate and the Legislature of the State of Louisiana where the so-called shrimp act was being discussed, the same having been referred to said committee by the State Legislature, and at said meeting the Hon. John Dymond one of the attorneys representing the interest seeking such legislation, was questioned as to the value of shrimp hulls as a fertilizer and stated that the purpose of this act was not to conserve said shrimp hulls but that they were included in the act only for the purpose of compelling all the shrimp caught in Louisiana to be manufactured in Louisiana.

Affiant further states that at Violet, Louisiana, one of the two plants operating on the East side of the Mississippi River, all shrimp hulls and heads are placed on a barge and carried out into the lake and dumped therein, and that affiant knows of no person on the East side of the river who makes any attempt whatsoever to conserve said shrimp hulls, and that said shrimp hulls have no commercial value on said East side of the river.

Affiant further states that he is advised and believes that whole shrimp known as raw shrimp are continuously shipped out of the State of Louisiana without any interference from the Conservation Department of the State of Louisiana.

And further affiant sayeth not.

(Sig.) R. Hart Chinn.

Sworn to and subscribed before me, this the 21st day of October, A. D. 1927. (Sig.) Antonio Peresich, Notary Public. (Seal.)

[fol. 125] AFFIDAVIT OF ALEX MISTICOS, ON BEHALF OF PLAINTIFF—Filed October 27, 1927

(Exhibit Attached to This Affidavit Transmitted in the Original by Order of Court)—Filed October 27, 1927

STATE OF MISSISSIPPI,
Hinds County:

Personally came before me, the undersigned officer in and for the aforesaid state and county, the within named Alex Misticos, who, by me being duly sworn, makes oath that:

I am the proprietor of the Belmont Cafe, Jackson, Mississippi. Upon October 25, 1927 I sent the following telegram to New Orleans, Louisiana:

"Jackson, Miss., Oct. 25, 1927.

Paul Bougon Fish & Oyster Company, Inc., 1223 Peters Street, New Orleans, La.

Send by night express twenty-five pounds headless Louisiana sea shrimp.

Belmont Cafe."

In due course, I received from the City of New Orleans and from the addresses in said telegram the shrimp ordered.

(Sgd.) Alex Misticos.

Sworn to and subscribed before me, this 26th day of October, 1927. (Sgd.) Mrs. C. H. McCall, Notary Public.

Copy.

[fol. 126] AFFIDAVIT OF ALEX MISTICOS—Filed October. 26, 1927, on Behalf of Plaintiff

(Exhibit Attached to This Affidavit Transmitted in Original by Order of Court)

STATE OF MISSISSIPPI,
Hinds County:

Personally came before me, the undersigned officer in and for the aforesaid state and county the within named Alex Misticos, who states that he is the proprietor of the Belmont Cafe in Jackson, Mississippi; that he buys raw shrimp from Paul Bougon Fish & Oyster Company, Inc., of New Orleans, Louisiana; that they are shipped to him raw shrimp, with the hulls on them, the heads taken off; that they come to him by express and are shipped in cases containing approximately fifteen to twenty pounds per case; the said shrimp being packed in ice in order to preserve them. Affiant buys in this manner about two cases every two or three days, and buys them from New Orleans, Louisiana, all the year around; that he herewith attaches as Exhibits 1 and 2 hereto tags taken from cases of oysters or shrimp, which were received by him on Saturday morning October 22nd, 1927, from said Paul Bougon Fish and Oyster Company, Inc., New Orleans, Louisiana. Affiant states that he can obtain such shrimp from New Orleans, Louisiana, which are sea shrimp, in unlimited quantities.

(Sgd.) Alex Misticos.

Sworn to and subscribed before me, this 24th day of October, 1927. (Sgd.) M. M. McGowan, Justice of the Peace and ex-officio Notary Public, Fifth Supervisors District, Hinds County, Miss.

[fol. 127] AFFIDAVIT OF R. HART CHINN—Filed Oct. 26, 1927, on Behalf of Plaintiff

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public in and for the City of Biloxi, Harrison

County, Mississippi, R. Hart Chinn, a resident of Biloxi, Mississippi, who, being by me first duly sworn, did depose and say:

That he is the Manager of Foster Fountain Company, Inc., a corporation operating a sea-food packing plant in the City of Biloxi, Harrison County, Mississippi; that said Foster Fountain Company, Inc., operates some twenty or more boats for the purpose of catching shrimp and transporting same to Biloxi, Mississippi, and that, to the personal knowledge of affiant, said Foster fountain Company, Inc., has procured license for said boats as required by the laws of the State of Louisiana, has paid the ten cent per barrel tax on all shrimp caught by said boats in the Louisiana waters, and has fully complied with or attempted to fully comply with all the provisions of the laws of the State of Louisiana relative to procuring license, and the payment of taxes, for the operation of said boats in the catching of shrimp in the Louisiana waters, and the transporting of said shrimp to the State of Mississippi, including the tax per barrel on said shrimp.

(Sgd.) R. Hart Chinn.

Sworn to and subscribed before me this the 24th day of October, A. D., 1927 (Sgd.) J. W. Swetman, Notary Public, City of Biloxi, Miss.

Copy.

[fol. 128] Affidavit of Donald W. Howe—Filed October 26, 1927, on Behalf of Plaintiff

[Title omitted]

Personally appeared before me, the undersigned authority, a Notary Public in and for the City of Biloxi, Harrison County, Mississippi, Donald W. Howe, a resident of Biloxi, Mississippi, who being by me first duly sworn did depose and say:

That he is a Chemist, having obtained a B. S. Degree at Mississippi College, Jackson, Mississippi, at the close of the 1913-1914 session of said College; that on Friday, Octo-

ber 21st, 1927, there was delivered to affiant approximately five pounds of shrimp heads and tail skins which had been removed from shrimp by the ordinary method used by shrimp packers in removing heads and skins from shrimp, the shrimp from which said heads and skins were removed having been cought in the Louisiana waters; that said shrimp heads and skins were delivered to affiant with the request that he make a chemical analysis of same for the purpose of determining the fertilizer value of said shrimp heads and skins; that this affiant made such chemical analysis and found said shrimp heads and skins to contain the following fertilizer value: Phosp-ate (P205) eighty-eight one-hundredths of one per cent.; Nitrogen three and fifty-seven one-hundredths per cent.; Potash (K20) twenty-two one-hundredths of one per cent.; that in addition to the above affiant found said shrimp heads and skins to contain seventy and eighty-five one-hundredths per cent. moisture and five and thirty-seven one-hundredths per cent. ash.

And further affiant sayeth not.

(Sgd.) Donald W. Howe.

Sworn to and subscribed before me this the 25th day of October, A. D. 1927. (Sgd.) Eugene Peresigh, Notary Public.

[fol. 129] Affidavit of L. J. Folse—Filed October 27, 1927 on Behalf of Plaintiff

[Title omitted]

Personally came before me the undersigned officer in and for the State of Louisiana, Parish of Orleans, City of New Orleans, who by me being duly sworn makes oath that his name is L. J. Folse; that he is thirty-nine years of age; that he is the General Manager of the Mississippi State Board of Development and lives at Jackson, Miss.; that he spent fifteen years of his life in New Orleans, Louisiana, and that he became acquainted with what is known as the fresh shrimp business as carried on in the State of Louisiana; that under such business large quantitites of sea shrimp have at all times been shipped out of the City of

New Orleans into Mississippi, Alabama, Tennessee, New York, Ohio and other parts of the Union; that such shrimp are caught in the salt waters of Louisiana and is a very great business in interstate commerce; that some times the shrimp are shipped out with the heads off, always with the hulls on; some times with both heads and hulls on; that they are put in cases or barrels packed in ice so as to preserve them during the course of shipment.

Since the passage of what is known as the Shrimp Act Bill by the Legislature of the State of Louisiana, he has had occasion to visit Louisiana and has made some special study as to the operation and enforcement of the Act and its effect upon the fresh shrimp business; that from such investigation he has found and ascertained, and so states to be a fact, that the fresh shrimp business, that is to say the sale of raw sea shrimp caught in the waters of Louisiana, has been continuously carried on since the enactment of the Legislation as before; that the Act has not been construed or enforced as to apply to salt shrimp or sea shrimp shipped out of the State which are not intended to be canned out of the State, but which are intended to be used as a food. Affiant states that he has ascertained from such investigation that at all times since the passage of the Act large quantities of fresh shrimp have been and are now being shipped out of the City of New Orleans over the American Railway Express and the Southeastern Express Companies to points in other states with the hulls on, and in many cases both with the heads and hulls; that the fresh shrimp business is of great importance to fishermen and [fol. 130] shrimp dealers in the City of New Orleans; that it is a business which has constantly, and is constantly, growing; that by quicker methods of transportation the fresh shrimp may be shipped a greater distance without spoiling, and the people—the consumers—prefer fresh shrimp over canned shrimp and this business would increase in volume as methods of transportation and refrigeration increase. As soon as it shall be possible to ship shrimp by air transportation, or to preserve the shrimp in what is known as dry ice, the development of the business will be wonderful. Affiant states that there has been at no time, nor is there now, an effort existing in the State of Louisiana to restrain or prevent the shipment of such fresh

shrimp with the hulls and heads upon them. Upon the other hand such course of business is not regarded as being in violation of the Law.

(Sgd.) L. J. Folse.

Sworn to and subscribed before me, this 26th day of October, 1927. (Sgd.) J. H. Forcelle, Jr., Notary Public. (Seal.)

[fol. 130½] AFFIDAVIT OF L. J. FOLSE FOR PLAINTIFF—Filed October 27, 1927

STATE OF MISSISSIPPI,
County of Hinds,
City of Jackson:

Personally came before me, the undersigned officer in and for the aforesaid jurisdiction, L. J. Folse, who by me being duly sworn, makes oath that he is the General Manager of and for the Mississippi State Board of Development, and that, as such, he was present at a meeting of the legislative committee of the state senate of the State of Louisiana, when such committee had under consideration in 1925 what is known as the Shrimp Act Bill, now in force; that he was present when the Honorable John Dymond, one of the attorneys representing parties interested in the passage of the bill, made a speech before the committee; that said attorney was asked by a member of the committee as to whether or not shrimp hulls have any value, and he stated to the committee that the clause was placed in the bill for the purpose of compelling the canning of the shrimp in the State of Louisiana and to prevent the shrimp from being shipped out of the state for such purpose. That the Senator who asked him the question was Senator Delos Johnson from one of the parishes east of the Mississippi River.

(Sgd.) L. J. Folse. (Seal.)

Sworn to and subscribed before me, this 24th day of October, 1927.

(Sgd.) M. J. Conerly, Notary Public. (Seal.)

[fol. 131] EXHIBIT IN EVIDENCE

STATE OF LOUISIANA:

I, The undersigned Secretary of State, of the State of Louisiana, do hereby certify that the annexed and following seven pages contain a true and correct copy of the charter of the Foster, Fountain Company, Inc., domiciled in New Orleans, Parish of Orleans, Louisiana, as is shown by comparison with the certified copy of charter on file and of record in the archives of this office.

Given under my signature, authenticated with the impress of my Seal of office, at the City of Baton Rouge, this 11th day of April A. D. 1922.

(Signed) James J. Bailey, Secretary of State.
(Seal.)

[fol. 132] CHARTER OF THE FOSTER, FOUNTAIN COMPANY, INC.

UNITED STATES OF AMERICA,
State of Louisiana,
Parish of Orleans,
City of New Orleans:

Preamble

Be it known, That on this 24th day of the month of February, in the year of Our Lord One Thousand Nine Hundred and twenty-one, and of the independence of the United States of America, the one hundred and forty-fifth, before me Andrew B. Booth, Jr., a Notary Public, in and for the Parish of Orleans, State of Louisiana, duly commissioned and qualified, therein residing, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared the several persons whose names are hereunto subscribed, all of the full age of majority, who severally and mutually declared unto me, said Notary Public, that availing themselves of the laws of the State of Louisiana relative to the organization of Corporations, and more especially Act No. 267 of the year 1924 of the General Assembly of the State of Louisiana, they have covenanted and agreed and by these presents do covenant and agree for themselves, their successors and assigns, to form them-

selves into a Corporation and body politic in law, for the objects and purposes, and under the stipulations hereinafter set forth.

Article I

Name and Title, Etc.

The name and title of this Corporation shall be the "Foster, Fountain Company, Inc.," and as such shall have and enjoy succession and existence by its corporate name for a period of fifty (50) years from the date hereof; it shall have the power and authority to contract, sue and be sued, and make and use a corporate seal, the same to break and alter at pleasure, to hold, purchase, lease, sell, mortgage, hypothecate or pledge property, real, personal or mixed, to make and issue notes and certificates of in- [fol. 133] debtedness; to buy and hold stock in any other company or companies that may assist this company in its objects and purposes; to name, elect, and appoint managers, directors, agents, clerks or other employes, to properly conduct its corporate business, and to make and establish such by-laws, rules and regulations as may be found necessary or desirable for the management of the business and affairs of the Corporation, and generally to do all and every other act, matter or thing necessary for the complete and proper carrying out of said business.

Article II

Domicile, Etc.

The domicile of this Corporation shall be in the City of New Orleans, Parish of Orleans, State of Louisiana, where all citations or other legal process shall be served upon the president, or in his absence, upon the Vice-President.

Article III

Objects and Purposes

The objects and purposes for which this Corporation is organized and the general nature of the business to be carried on by it, are stated and declared to be as follows:

1st. To do a general canning business of Oysters, shrimps and other sea foods and all vegetables and fruits;

2nd. To own and operate boats and various kinds of equipments in the conduct of said business.

3rd. To buy and sell and pack canned goods for food; to buy, construct and operate factories for the manufacture of canned goods for food; to do all other acts necessary or incidental to the conduct of the canning goods business, such as the manufacture of cans, raising or growing crops for canning, and to buy, rent or lease estate for any or all of these purposes.

4th. To preserve fruits, vegetables, meats and other articles of food in hermetically sealed cans; to preserve, [fol. 134] evaporate, can and pickle meats, all kinds of fruit and vegetables of the farm, garden or orchard; to buy and sell the same; and generally to deal in other articles and conduct all necessary business connected or incident to these purposes; to buy and sell merchandise of any kind, separately or in connection with the above purposes; and to acquire and hold such real estate as is necessary for the purpose of its business; and to manufacture, buy and sell cans and tinware generally;

5th. To purchase, can, jar and preserve vegetables, fruits and edible grains in wooden, tin or glass cans or jars; to purchase and manufacture wooden, tin or glass cans or jars, and any and all materials that may be necessary to the carrying on of the said canning, jarring, and preserving business; and to sell the said vegetables, fruits and edible grains in cans, jars or preserves.

6th. To construct, build, purchase, acquire, own, operate any and all houses, buildings, equipment, and real and personal property of every description whatsoever as may be necessary and proper for the accomplishment of any of the objects and purposes set forth herein, and generally to do any and all things that may be incidental to, suitable or necessary for the attainment of any of the above described objects and purposes and to exercise any of the powers conferred upon Corporations of this character by the laws of the State of Louisiana, and of the other States of the United States.

Article IV

Capital Stock, Etc.

The Capital Stock of this Corporation is hereby fixed at Fifty Thousand ($50,000.00) Dollars, divided into and represented by Five Hundred (500) shares of the par value [fol. 135] of One Hundred ($100.00) Dollars each. The Capital Stock may be increased in the manner provided by law to the sum of Seventy-five thousand ($75,000.00) Dollars. All stock shall be transferable upon the books of the company and in accordance with its by-laws and regulations.

Article V

Board of Directors

All the powers of this Corporation shall be vested and exercised by a Board of Directors composed of not more than seven (7) and not less than three (3) Directors, who shall elect from their number a President, Vice-President and Secretary-Treasurer, and such other officers as the Board of Directors shall deem necessary. The said Board of Directors shall be elected annually on the second Monday of the month of July each year, the first election to be held in the year 1921. All such elections shall be by ballot, at the office of the Corporation. Notice of annual meetings as well as of special meetings of Stockholders, shall be given by written notice mailed Thirty (30) days in advance of the date fixed for such meeting to each stockholder appearing as such on the books of the company, at his last designated address, or at the general delivery at New Orleans, if he has not designated an address. Each shareholder is entitled to one vote for each share of stock standing in his name on the books of the company, said vote to be cast in person or by proxy, and the majority of votes cast shall elect. The Board of Directors shall have the power to fill all vacancies which may occur on the Board, even though no quorum remains at the time such vacancies are to be filled. Failure to elect Directors on the day above specified shall not dissolve the Corporation, but the officers then in office shall remain in office until their successors are elected. The Di-

rectors may elect such other officers as they deem necessary or convenient for the carrying on of the company's business and shall have power to unite two or more offices, and to confer the same upon one person, or to dispose with any office in their discretion. The Board of Directors shall also [fol. 136] have power to make and establish, as well as to alter and amend, all by-laws, rules and regulations necessary and proper for the support and management of the affairs and business of the Corporation and not inconsistent with its charter. Three (3) Directors shall constitute a quorum for the transaction of bueiness. The Board shall have power, without referring to the stockholders, to borrow money, execute mortgages, to issue notes, pledges, bonds or other obligations, in such amounts and on such terms as in their judgment may be advantageous, and generally to do all things reasonably necessary or convenient for the proper carrying on of the business of the Corporation. At any meeting of the Board of Directors, any Directors, absent from the meeting may be represented by any other director, who may cast the vote of the absent Director according to the written instructions, either general or special, of such absent Director. Until the annual meeting in 192-, the Board of Directors shall consist of the following:

Martin Fountain, Jr., whose post office address is Biloxi, Mississippi, V. J. Olivari, whose post office address is Biloxi, Mississippi, R. Hart Chinn, whose post office address is Bilovi, Mississippi and Arthur Yancey, whose post office address is 1325 Nashville Ave., New Orleans, La., with the said Martin Fountain, Jr., as President, V. J. Olivari, as Vice-President, and R. Hart Chinn, Secretary-Treasurer.

Article VI

Amendments, Etc.

This act of incorporation may be modified, changed or amended, or this Corporation may be dissolved in the manner provided by law, by a vote of two thirds (⅔) of the entire outstanding Capital Stock of all classes, present or represented at a general meeting of the Stockholders convened [fol. 137] for such purposes, after a previous notice shall

have been given in the manner above required, to begiven of the annual meeting of the Corporation. The Capital Stock of the Corporation may be increased or decreased by proceedings in accordance with the laws of the State of Louisiana.

Article VII

Dissolution, Etc.

If this Corporation shall be dissolved, either by limitation or from any other cause, its affairs, shall be liquidated by three (3) commissioners, to be appointed at the meeting of the Stockholders convened for the purpose of liquidation, and to be elected by the votes of all the stockholders voting upon a parity. Said liquidators shall remain in office until the affairs of said Corporation shall have been fully settled and liquidated and they shall have full power and authority to transfer and give title to all the property and assets of the Corporation and to distribute the proceeds. In case of the death, disability or resignation of one or more liquidators, the vacancy shall be filled by the survivor or survivors.

Article VIII

Liabilities of Stockholders

No stockholder shall ever be held liable or responsible for the contracts or faults of said Corporation in any further sum then the unpaid balance due on the shares of stock owned by him, nor shall any mere informality in organization have the effect of rendering this Charter null, or of exposing any Stockholder to any liability beyong the amount of his stock.

Thus done and passed at my Law and Notarial Offices in the City of New Orleans, on the day, month and year, first above written in the presence of W. T. Barry and H. L. [fol. 138] Armstrong, competent witnesses, who have hereunto subscribed their names, with said appearers, and me, Notary, after due reading of the whole.

(Original signed) 1. Martin Fountain, Jr., 124⅔ shares. 2. V. J. Olibari, 124⅔ shares. 3. R. Hart Chinn, 124⅔ shares. 4. Arthur Yancey, 1 share.

Witnesses: H. L. Armstrong, W. T. Barry.

Andrew B. Booth, Jr., Notary Public.

Certificate of the Recorded of Mortgages

STATE OF LOUISIANA,
Parish of Orleans:

I, the undersi*n*ged, Deputy Recorder of Mortgages, in and for the Parish of Orleans, State of Louisiana, do hereby certify that the above and foregoing Act of Incorporation of the "Foster, Fountain Company, Inc.," was recorded in the Mortgage Office Records of the Parish of Orleans, this State, o the 15th day of March, A. D. 1921, in M. O. B. No. 1253, folio No. 291.

(Signed) Robert Scott, Deputy Recorder of Mortgages.

[fol. 139] Subscription List to the Capital Stock of the Foster, Fountain Company, Inc., by Act Passed Before the Undersigned Notary Public on the 24th Day of February, 1921

New Orleans, Louisiana,
February 24th, 1921.

Total amount of Capital Stock	$50,000.00
Number of shares	500
Par value of each share	$100.00

Signatures of subscribers	Addresses	Number of shares
Martin Fountain, Jr	Biloxi, Miss	124 2/3
V. J. Olivari	Biloxi, Miss	124 2/3
R. Hart Chinn	Biloxi, Miss	124 2/3
Arthur Yancey	1325 Nashville Ave., New Orleans, La	1
Total number of shares subscribed for		375

Witnesses to above signature-: H. L. Armstrong, W. T. Barry.

STATE OF LOUISIANA,
Parish of Orleans:

Personally came and appeared before me the undersigned authority, the hereinabove named subscribers, Martin Foun-

tain, Jr., V. J. Olivari, R. Hart Chinn and Arthur Yancey, who signed the foregoing subscription list of the Capital stock before me Notary and in the presence of the two competent witnesses, whose names are thereto subscribed as such, and the said appearers thereupon declared and acknowledged unto me, Notary, in the presence of the said witnesses, that they signed and executed the foregoing subscription list of the Capital Stock of the Foster, Fountain Company, Inc., as there own free act and deed and for the uses and purposes herein set forth.

[fol. 140] In witness whereof, the said appearers in the presence of the undersigned competent witnesses, who have hereunto signed their names with said appears and with me, Notary, on this 24th day of February, 1921.

(Original signed) Martin Fountain, Jr., V. J. Olivari, R. Hart Chinn, Arthur Yancey.

Witnesses: H. L. Armstrong, W. T. Barry.

Andrew B. Booth, Jr., Notary Public. (Seal.)

[fol. 141] AFFIDAVIT OF TWO MEMBERS OF THE BOARD OF DIRECTORS OF THE FOSTER FOUNTAIN COMPANY, INC.

STATE OF LOUISIANA,
Parish of Orleans:

Personally came and appeared before me, the undersigned authority, Martin Fountain, Jr., and R. Hart Chinn, who upon being duly sworn depose and say:

That they are members of the Board of Directors of the Foster, Fountain Company, Inc., a corporation organized under the laws of the State of Louisiana; on the 24th day of February, 1921, by Act of Incorporation passed before Andrew B. Booth, Jr., Notary Public, in and for the Parish of Orleans, State of Louisiana.

That of the whole of the capital stock of the said corporation, i. e., Fifty Thousand ($50,000.00) Dollars, the sum of thirty seven thousand five hundred ($37,500.00) Dollars was subscribed and has been fully paid for.

Executed in Duplicate.

(Signed) Martin Fountain, Jr., (Signed) R. Hart Chinn.

Sworn to and subscribed before me this 24th day of February, 1921. (Signed Andrew B. Booth, Jr., Notary Public. (Seal.)

[fol. 142] CERTIFICATE OF NOTARY

This is to certify that the foretoing "Act of Incorporation" with the Certificate of Recordation appearing thereon is a true and correct copy of the Original "Act of Incorporation" of the Foster, Foundation Company, Inc.," passed before me on the 24th day of the month of February A. D. 1921, on file and of record in my Notarial Archives.

(Signed) Andrew B. Booth, Jr., Notary Public. (Seal.)

AFFIDAVIT OF STANLEY C. ARTHUR FOR DEFENDANTS—Filed October 27, 1927

[fol. 143] [Title omitted]

AFFIDAVIT OF STANLEY C. ARTHUR ON BEHALF OF DEFENDANTS

STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, personally came and appeared Stanley C. Arthur, who being by me sworn, deposes and says:

That he is the Director of the Division of Wild Life of the Department of Conservation of the State of Louisiana; that having been directed by the Commissioner of Conservation to take certain pictures of a shrimp hulling and drying plant, to be used in the aforesaid litigation, he did proceed to the plant of the Dunbar-Dukate Co., Inc., at Westwego, Jefferson Parish, Louisiana, and he there took nine pictures of different views of the machinery and apparati incident to the drying of shrimp hulls and heads and he has attached hereto and made part hereof prints of these nine photographs so taken by him, numbered respectively, Arthur, Nos. 1 to 9, inclusive, for identification with this affidavit. These pictures indicate:

No 1, the outside view of the hull drying apparati or drying drums and houses;

No. 2, Engine or motive power for revolving drums;
No. 3, Detail of cogs to revolving drums;
No. 4, Rear views of Revolving drums;
[fol. 144] No. 5, Sacking scaffold;
No. 6, Detailed view of drying shrimp hulls and heads, after being dehydrated;
No. 7, Rear view of drying drums showing part of interior;
No. 8, View of drying plant, with boiler shed and stack;
No. 9, View showing location of their drying plant on Company's canal at Westwego, Louisiana.

The foregoing pictures are correct reproductions of the actual views as taken by him.

(Signed) Stanley C. Arthur.

Sworn to and subscribed before me, this 27th day of October, 1927. (Signed) H. J. Stansbury, Notary Public. Dy. Clk. Court of Appeals, Parish of Orleans. (Seal.)

[fol. 145] AFFIDAVIT OF JOHN DYMOND, JR., FOR DEFENDANTS—Filed October 27, 1927

[Title omitted]

AFFIDAVIT OF JOHN DYMOND, JR., ON BEHALF OF THE DEFENDANTS

Before me, the undersigned authority, on this 26th day of October, 1927, personally came and appeared John Dymond, Jr., who being by me first duly sworn did depose and say:

I am a resident of Plaquemines Parish, Louisiana, and a lawyer by profession, having been practicing law for thirty-seven years.

My home in Plaquemines Parish is located in the heart of the oyster industry, as well as in the heart of the shrimp industry, and I am thoroughly acquainted with the shrimp and oyster industry as they exist throughout the entire State of Louisiana.

I was leading counsel for the State of Louisiana in the litigation instituted in October, 1902 by the State of Louisiana against the State of Mississippi in the Supreme Court

of the United States to determine the proper boundary between the States of Louisiana and Mississippi of the Mississippi River, and in which a final decree was secured from the Supreme Court of the United States forever fixing and determining the said boundary, and in which case on April 23d, 1906 a decree was entered, as follows:

"This cause came on to be heard on the pleadings and proofs and was argued by counsel. On consideration thereof it is found by the court that the State of Louisiana, complainant, is entitled to a decree recognizing and declaring the real, certain and true boundary south of the State of Mississippi and north of the southeast portion of the State of Louisiana, and separating the two States in [fol. 146] the waters of Lake Borgne and Mississippi Sound, to be, and that it is, the deep water channel sailing line emerging from the most eastern mouth of Pearl River into Lake Borgne and extending through the northeast corner of Lake Borgne, north of Half Moon or Grand Island, thence east and south through Mississippi Sound, through South Pass between Cat Island and Isle au Pitre, to the Gulf of Mexico, as delineated on the following map, made up of the parts of charts Nos. 190 and 191 of the United States Coast and Geodetic Survey, embracing the particular locality:"

"And it is ordered, adjudged, and decreed accordingly."

"It is further ordered, adjudged and decreed that the State of Mississippi, its officers, agents and citizens, be and they are hereby enjoined and restrained from disputing the sovereignty and ownership of the State of Louisiana in the land and water territory south and west of said boundary line as laid down on the foregoing map."

"And that the costs of this suit be borne by the State of Mississippi."

I was leading counsel before the Legislature of the State of Louisiana in its session of 1926, at which session of the Legislature of Louisiana, was adopted Act 103, known as House Bill No. 177 by Mr. Ellender, the title to which was as follows:

"An act to declare all shrimp and parts thereof in the waters of the State to be the property of the State of Louisiana, and to provide the manner and extent of their

reduction to private ownership; to encourage, protect, conserve, regulate and develop the shrimp industry of the State of Louisiana; to provide penalties for the violations [fol. 147] of the provisions of this Act, and to repeal all laws in conflict herewith."

During the said Legislative session and the consideration of said Legislation by the House and the Senate there appeared people representing the proponents of said measures, and people representing the opponents of said measure, and that among those representing the opponents of said measure were the canning and packing interests of the State of Mississippi, and among the opponents of said measure was the Foster Fountain Company, Complainant herein, as represented by R. Hart Chin, President, and that the said R. Hart Chin addressed the Committee of the House considering said Legislation in opposition to said Legislation; that the Mississippi interests were represented by Arthur J. O'Keefe, Jr., an Attorney at Law, residing in the City of New Orleans, who appeared on behalf of the Mississippi interests, including Foster Fountain Company, Complainant, in opposition to said proposed Legislation, and that said Mississippi interests were further represented by Honorable John J. Kennedy, Mayor of Biloxi, Miss.;

That at the time of the introduction of said House Bill No. 177, and at the time of its consideration by the Committee of the Senate, said measure proposed to go into effect at once. Whereupon, the request was made on behalf of the Complainant and others, that opposition to said measure would cease if the date of its enforcement was postponed one year, or until June 15th, 1927, and said measure thereupon was passed by the House of Representatives and Senate, and approved by the Governor on July 18th, 1926, containing a provision to the effect that the law should not go into effect until June 15th, 1927 in order to permit any Mississippi interests to acquire factory sites in Louisiana.

As representing the said agreement, and as indicating its existence, affiant attaches hereto, marked "Dymond 1," a copy of the original compromise agreement, bearing the original signature of John Dymond, Jr.; C. L. Wise on behalf of the proponents of the measure, and Arthur J. O'Keefe, Jr., on behalf of the Mississippi interests, he act-

[fol. 148] ing as their attorney, and bearing the original signatures of Senator Jules G. Fisher, Donald Labbe and Delos R. Johnson;

That as evidencing the compromise and as acknowledging the same, affiant attaches hereto marked Exhibit "Dymond 2," the letter of John J. Kennedy, Mayor of Biloxi, Miss. under date of June 24th, 1926, recognizing said compromise, and affiant alleges that the Foster Fountain Company, Inc., is estopped from contesting the legality of said Legislation having agreed to it in the form in which it was passed by the Legislature of the State of Louisiana, and having gotten the benefit of the one year's delay to comply with said law, and complainant's contention is without equity.

I know that there are a number of sites, both in the Parishes of Plaquemines and St. Bernard, readily available for the erection of additional shrimp canneries, in the event that any of the Mississippi canneries desire to come in to Louisiana. I know that several canneries have already come in to the State of Louisiana and established factories here and are operating, who formerly operated in Mississippi. I know that the canneries of Louisiana are amply able to handle the products of the waters of the State of Louisiana of a sea food character for canning and packing.

One of the reasons that enabled me to secure the adoption by the Legislature of the State of Louisiana in 1926 of Act 103 was the fact that the State of Mississippi had a similar statu-*s* on its books prohibiting the exportation of oysters in the shell from the State of Mississippi except by express, a copy of which law will be hereinafter quoted.

There is a statute in Alabama that also restricts the fishing of shrimp to Alabamians under conditions therein described.

The sites that the State of Louisiana possesses for additional canning factories are first-class in every particular, and the statement that the State of Mississippi alone possesses sites furnishing adequate human comforts is in error, and as a matter of fact, property values along the Mississippi coast have advanced to such an extent as to [fol. 149] make their use for commercial purposes inadvisable, and the tendency there has been to dismantle plants and to convert them into residential sub-divisions,

and any Mississippi concern desiring to move into Louisiana could sell its Mississippi site at a profit and purchase a site equally good in Louisiana at a much reduced cost.

Under the operations of Act 103 of 1926 all shrimp exported from Louisiana, whether by any person, firm or corporation must have their heads and hulls removed in Louisiana before exportation, and any statement that conditions otherwise exist is untrue and not in accordance with the laws of the State of Louisiana.

It is untrue that Act 103 of 1926 imposes any greater burden upon corporations than it does upon individuals. The right of property of the State of Louisiana in the shrimp taken from the waters of the State passes only to the individual or corporation when the shrimp have been taken and handled in accordance with the laws of the State of Louisiana, which require that the head and hull shall be removed from such shrimp before any private ownership shall exist therein, the title in the meantime remaining in the State of Louisiana.

Act 103 of 1926 was in no wise designed to create a monopoly and did not do so, but merely endeavored to secure for the benefit of the State of Louisiana the enjoyment of her own natural resources that were the property of the sovereign State of Louisiana, and in which no individual citizen had any property right, and in which any person or corporation could acquire a property right that would become subject to commerce only upon the prior compliance with the conditions of said law.

The Foster Fountain Co., Inc. can establish a plant at a suitable site in Louisiana and operate as cheaply as it can in Mississippi. It can sell its Mississippi site at a profit for residential purposes.

The Statutes of the State of Mississippi on the subject of oysters are as follows:

[fol. 150] "Mississippi Code, Article 3518, Heinghways Ed. Sec. 6160, based on an Act of the Mississippi Legislature of 1913 which remains unrepealed to this date:"

Oysters in the Shell.—It shall be unlawful for any person to take oysters in the shell out of the State of Mississippi by means of any transportation, except that oysters in the shell may be shipped out of the State by express.

Any person violating the provisions of this Section shall, on conviction, be fined in a sum not exceeding Five Hundred Dollars, or imprisonment in the county jail, not exceeding six (6) months, or both, at the discretion of the Court."

(Signed) John Dymond, Jr.

Sworn to and subscribed before me this 26th day of October, 1927. (Signed) Rudolph J. Weinmann, Notary Public.

[fol. 151] EXHIBIT No. 1

Amendments to House Bill No. 177 by Mr. Ellender

On page 18 of the printed bill at the end of line 30 strike out the period and insert a comma, followed by the words "provided that, in order to permit canning factories located beyond the limits of this State which have heretofore been permitted to take salt water shrimp out of the State for canning purposes to adjust their business to the conditions imposed by this act, the provisions of this Act which require all salt water shrimp to be peeled or removed from their hull or shell in Louisiana and the shrimp head and hull or shell to be left in Louisiana shall not go into effect until June 15, 1927, as to those shrimp canners who shall have obtained from the Department of Conservation permits permitting such canneries until June 15, 1927, to remove from the State salt water shrimp unpeeled for canning in factories located beyond the limits of the State, conditioned upon the right being reserved to the Department of Conservation of Louisiana to revoke any such permit upon the failure to be determined as a matter of fact, after hearing, by the Department of Conservation of Louisiana, that such permittee or licensee has failed to comply with the conditions imposed in such permit, and the Commissioner of Conservation shall be authorized to issue permits in accordance herewith, which permits shall expire June 15th, 1927.

It is the intention and sense of this exception that the canning factories located out of the State which have heretofore gotten their salt water shrimp from Louisiana shall

be permitted to continue to do so under former conditions, until June 15th, 1927, except that the closed seasons herein established shall become effective upon the due promulgation of this Act.

(Signed) Jules G. Fisher, Donald Laffe, Delos R. Johnson.

Approved: (Signed) John Dymond, Jr., Chas. L. Wise, Arthur J. O'Keefe.

[fol. 152] EXHIBIT No. 2

City of Biloxi

John J. Kennedy, Mayor

Biloxi, Mississippi, June 24, 1926.

Mr. John Dymond, Jr., Atty., Maison-Blanche Building, New Orleans, La.

MY DEAR JOHN: I thank you for the copies of the Shrimp Bill that you were kind enough to send me and if there are any charges for same, if you will let me know the amount I will send you a check.

I suppose the compromise was best for all parties concerned but I want to repeat to you that in my honest opinion the future will show that my opponents are absolutely wrong about this matter, and I believe the future will convince them of that fact.

Whenever you are on the Coast would be glad to have you come to Biloxi that I might open your eyes showing you developments.

With very best wishes, I am,

Sincerely yours, (Signed) Jno. J. Kennedy.

JJK/lt.

[fol. 153] AFFIDAVIT OF CHARLES F. GREINER, FOR DEFENDANTS—Filed October 27, 1927

[Title omitted]

Before me, the undersigned authority, on this 25th day of October, 1927, personally came and appeared: Charles

F. Greiner, who being by me first duly sworn, did depose and say:

I am the President of the Southern Shell Fish Company, Inc. with its canning plant located at Harvey, Louisiana and the company is engaged in the business of canning and packing sea food products and vegetables.

We can at our plant large quantities of lake or salt water shrimp and in connection with the handling of the hulls and heads and shells of the salt water or lake shrimp, we installed in our plant in 1920 a hull or shell dryer. This we have operated successfully for the past seven years and the sales of our product in the shape of shrimp bran is as follows:

1920	$2,794.21
1921	1,940.12
1922	2,032.50
1923	2,413.00
1924	2,390.95
1925	3,144.71
1926	5,094.52
1927	4,328.18
August & September, 1927	2,250.00
Total	$26,388.19

Our season in the shrimp industry begins on the first of July of each year and I have therefore considered the months of August and September, 1927 as part of the shrimp year of 1928.

The foregoing total of $26,388.19 represents profits made by our company as a result of our making use of this by-product of our canning industry.

The sanitary laws of the State of Louisiana require that all of our canning factories shall be operated under the most sanitary conditions and the utilization of this shrimp drying apparatus contributes to better sanitary results.

[fol. 154] I took an active part in securing the adoption of the present Legislation in Louisiana regulating the shrimp industry and I believe that this Legislation is designed to best serve the interests of the State of Louisiana. We have no difficulty in disposing of our shrimp hull bran and have found a ready market therefor.

Being interested in the enforcement of the shrimp law, I was in conference with the Department of Conservation of Louisiana prior to June 15th, 1927 when the law went into effect. The shrimp fishing season, however, opened only on August 15th, 1927. The Department of Conservation was prepared to enforce this law when it was prohibited by the restraining order issued by Judge Holmes of Mississippi.

I have been engaged in the canning business for the past nineteen years, fifteen years in Louisiana, and I am thoroughly familiar with the shrimp canning industry in Louisiana and with those who are engaged therein and the plants engaged in that industry and also available locations for additional plants in Louisiana. There are a number of available sites in Louisiana for shrimp canning plants which have not yet been occupied by canning factories. The capacity of the canners of Louisiana is adequate to take care of all of the shrimp that may be caught in Louisiana waters and certainly if the available sites are used by any new canning industries coming into Louisiana they can adequately take care of all shrimp caught within Louisiana waters. I am familiar with the condition of the waters east of the Mississippi River in the Parishes of St. Bernard and Plaquemines, State of Louisiana, and I note that the majority of the shrimp taken by the Mississippi canners for packing in Mississippi have been taken by them from the waters of St. Bernard and Plaquemines Parishes in Louisiana, and south of the boundary lines established by the Supreme Court of the United States in the suit of State of Louisiana vs. State of Mississippi.

The parishes or counties of St. Bernard and Plaquemines are possessed of vast natural resources in the waters of these two parishes, but these two parishes have heretofore [fol. 155] not been given the advantage of the utilization of the products of their waters because the same have been taken into the State of Mississippi and the industry of manufacturing these natural products into articles of commerce carried on into the State of Mississippi notwithstanding the fact that there are many suitable sites for canning factories in the St. Bernard and Plaquemines Parishes presently unoccupied and where adequate labor might be secured and properly houses and cared for.

(Signed) C. F. Greiner.

Sworn to and subscribed before me this 25th day of October, 1927, at New Orleans, La. (Signed) Rudolph J. Weinmann, Notary Public.

[fol. 156] AFFIDAVIT OF RAYMOND L. COLSON FOR DEFENDANTS—Filed October 27, 1927

[Title omitted]

Affidavit of Raymond L. Colson, on behalf of defendant.

Before me, the undersigned authority, on this 25th day of October, 1927, personally came and appeared Raymond L. Colson, who, being by me first duly sworn, did depose and say:

I am a resident of Biloxi, in the State of Mississippi, and I am President and Manager of the Marine Fertilizer and Feed Company of Biloxi, Mississippi; the Marine Fertilizer and Feed Company of which I am president purchased a number of drying apparatus previously used for the drying of brewers grain, these having been purchased at a very much reduced value on account of the cessation of the manufacture of beer or malt liquors.

The Marine Fertilizer & Feed Company in turn sold these driers to the various shrimp canning factories in the State of Louisiana as follows, to-wit:

Dunbar Dukate Co., Inc., Weswego, La.
do. Lafitte, La.
do. Golden Meadow, La.
do. Myrtle Gove, La.
Indian Ridge Canning Co., Houma, La.
Houma Packing Co., Houma, La.
Grand Caillou Packing Co., Grand Caillou, La.
Empire Packing Company, Empire, La.
C. B. Foster Packing Co., Happy Jack, La.
Southern Shell Fish Co., Harvey, La.

I have seen all of these plants and they are in operation in the respective shrimp packing factories except that of the Empire Packing Company has not yet erected its drier nor has Dunbar Dukate Company, Inc., erected its drier at its Myrtle Grove Plant.

The purpose for which these drying plants were sold to these respective companies was to convert the heads and hulls or shells of shrimp caught in the shrimp industry [fol. 157] into a product that could be used for fertilizer and feed purposes.

I know that the Deep Sea Canning Company at Violet, La., also has a shrimp hull drying apparatus, but this was not purchased from our company.

I also know that the Pelican Lake Oyster and Packing Company of Houma, Louisiana has one of these shrimp drying apparatus, but it also was not purchased from our company.

My company sold one of these apparatus to the Martin Fountain Packing Company at Biloxi, Mississippi. This plant at Martin Fountain Packing Company has been run at intervals.

Our company the Marine Fertilizer and Feed Company endeavors to buy whatever quantity it can of these dried shrimp hulls and last year purchased approximately thirty thousand ($30,000.00) dollars worth; and in addition thereto we furnished the bags and paid the freight, bringing the total cost to us up to approximately thirty-four thousand ($34,000.00) dollars or more.

There are twelve (12) of these shrimp hull drying plants in Louisiana and only one in Mississippi.

My company is in the market to purchase all of this material that it can at a reasonable price.

(Sgd.) Raymond L. Colson.

Sworn to and subscribed before me this 25th day of October, 1927. (Sgd.) Rudolph J. Weinmann, Notary Public, New Orleans, La.

Copy.

[fol. 158[AFFIDAVIT OF JAMES V. DUNBAR FOR DEFENDANTS—Filed October 27, 1928

[Title omitted]

Before me, the undersigned authority, on this 25th day of October, 1927, personally came and appeared, James V.

Dunbar, who, being by me first duly sworn, did depose and say

I am the President of Dunbar, Dukate Company, Inc., a Louisiana corporation engaged in the canning and packing of sea food products and vegetables with canning plants located at Myrtle Grove, Louisiana, Westwego, Louisiana, Lafitte, Louisiana, Golden Meadow, Louisiana and we are also operating the Deep Sea Canning Company plant at Violet, Louisiana, the latter being under lease with an option to purchase predicated upon the enforcement of the Louisiana shrimp law.

We also operate a shrimp and oyster canning factory at Pass Christian, Mississippi and one at Biloxi, Mississippi.

We have shrimp drying apparatus installed at our plants at Westwego, Louisiana, Lafitte, Louisiana, Golden Meadow, Louisiana and Violet, Louisiana. The one at Myrtle Grove, Louisiana has not been installed on account of the controversy in regard to the lease of the site occupied by our company at that place.

We have been manufacturing and selling shrimp bran for the years 1925, 1926 and up to October 1st, 1927 as follows

1925,	89 17	tons at $30 00	$2,675 00
1926,	63	tons at $30 00	1,890 00
1927,	68 85	tons at $30 00	2,065 56
Tota.,	221 022	tons at $30 00	$6,630 66

Our plants are operating in a much more sanitary condition where the shrimp hull dryer is used and under the regulations of the Board of Health of the State of Louisiana we are required to operate all of our plants under the most sanitary conditions.

We were ready to move our canning plant from Biloxi, [fol. 15 '] Mississippi to Louisiana in order to comply with the shrimp law of Louisiana enacted in 1926 and to that end we purchased a site for a canning factory at Slidell, St. Tammany Parish, Louisiana, and because of the attack on the constitutionality of this law we have delayed the erection of that cannery until the constitutionality of this law shall have been settled. We also contemplated the

acquisition of a site and the erection of a plant on the Leopold Canal at Phoenix, Louisiana but deferred carrying that through on account of the Caenarvon Crevasse and thereafter on account of the institution of this present litigation.

At our plants at Pass Christian, Mississippi and Biloxi, Mississippi it has been our custom to throw away our shrimp hulls and shells thereby losing the value represented by such by-product. In Louisiana we convert them into a commercial commodity and derive the profit arising therefrom.

We have a market for all of our shrimp bran, as we have a contract with the Marine Fertilizer and Feed Company for a period of five years with an optional renewal of five years not only to handle our entire product but any raw material that we may acquire from others and dried in any of our plants. We also have received frequent inquiries from other sources for this product especially from New York and from Germany.

I have been connected with the canning and packing industry for thirty-five years and I am thoroughly familiar with the industry both in the State of Mississippi and in the State of Louisiana.

I am familiar with the territory in the State of Louisiana adjacent to the waters of the Parishes of St. Bernard and Plaquemines in the State of Louisiana, and I know that there are many sites that may be acquired for shrimp packing and canning factories which are as yet unoccupied. I am confident that the canning factories of Louisiana, those now in existence and those that might be erected at these desirable points can adequately care for all of the shrimp that Louisiana waters may produce.

[fol. 160] The waters of the Parishes (or counties) of St. Bernard and Plaquemines are great sources of sea food supply. Heretofore this raw material fished from the waters of St. Bernard and Plaquemines Parishes has been taken into the State of Mississippi and the industry carried on in the State of Mississippi of canning and packing these sea food products and converting them into commercial commodities to the disadvantage of the State of Louisiana.

The hulls and heads of shrimp, that is, lake or sea salt water shrimp are a valuable by-product in the shrimp can-

ning and packing industry and should be conserved for the benefit of the State of Louisiana.

The plant which we leased at Violet in St. Bernard Parish, Louisiana, pending a decision as to the constitutionality of the shrimp law of 1926 has been operated by us during the present fall season on a profitable basis. There has been more labor available there than we have been able to use, and all of this labor had opportunity for schooling of their children, comfo-table habitation and opportunity to attend church.

(Sgd.) Jas. V. Dunbar.

Sworn to and subscribed before me this 25th day of October, 1927 at New Orleans, La. (Sgd.) Rudolph J. Weinmann, Notary Public.

Copy.

[fol. 161] Affidavit of Dr. L. H. Jastremaski, for Defendants—Filed Oct. 27, 1927

[Title omitted]

Before me, the undersigned authority, on this 25th day of October, 1927, personally came and appeared Dr. L. H. Jastremaski, who, being by me first duly sworn, did depose as follows:

I am the President of the Pelican Lake Oyster & Packing Company of Houma, Terrebonne Parish, Louisiana, which is engaged in the packing of sea foods and vegetables.

In connection with our packing of lake or salt water shrimp we operate at our plant a shrimp hull drying apparatus for the purpose of drying these shrimp hulls and making them valuable as a marketable article and we also grind these hulls.

Prior to the installation of this shrimp hull drying apparatus it cost us as estimated by me fifteen ($15.00) dollars a day to dispose of our shrimp hulls by burying them in the ground and covering them with dirt and disinfectant in order to prevent any bad or unhealthful and unsanitary odors or conditions. Since the use by us of this shrimp hull drying apparatus I estimate that we are making the equiv-

alent of sixty (60¢) cents a barrel on each barrel of raw shrimp purchased by us.

The Board of Health of the State of Louisiana requires that all of the canning plants in Louisiana shall be run under the most sanitary conditions possible and the use of this shrimp hull drying plant contributes largely to that result.

We are regularly disposing of all of our product from our shrimp hull drying apparatus under a contract which we have and which contract expires February 1, 1928, and we have a proposal for our product at a higher price than is being presently received.

I estimate that the profits coming from the operation of the shrimp hull drying plant since we have operated it have averaged about five thousand ($5,000.00) dollars a year and we have been operating it since about 1920.

(Signed) L. H. Jastremaski.

Copy.

[fol. 162] Sworn to and subscribed before me this 25th day of October, 1927. (Sgd.) Rudolph Weinmann, Notary Public, New Orleans, La.

Copy.

[fol. 163] In United States District Court

[Title omitted]

Order Permitting Clerk to Transmit Certain Exhibits in the Original—Filed February 1, 1928

It is ordered, adjudged and decreed that the Clerk of this Court, in preparing the record for the Supreme Court of the United States may, where necessary or desirable, include in the record, the original of any document, photograph or exhibit forming part of the record.

Ordered, adjudged and decreed this the 30th day of January, 1928.

(Signed) Louis H. Burns, District Judge.

[fol. 164] IN UNITED STATES DISTRICT COURT

NOTATION RE ORIGINAL EXHIBITS

The following exhibits are transmitted in the original, as per Order of Court, copied at page 164 of this transcript:

Nine photographs on behalf of defendants.

Invoice tag attached to affidavit of Alex Nisticos, on behalf of plaintiffs copied at page 125 of the transcript.

Invoice tag attached to affidavit of Alex Nisticos, on behalf of plaintiffs copied at page 126 of the transcript.

Map, attached to affidavit of Tony Guerra, et al., copied at page 67 of this transcript.

[fol. 165] IN UNITED STATES DISTRICT COURT

[Title omitted]

Proceedings had in open Court before the Honorable Rufus E. Foster, Louis Henry Burns, and E. R. Holmes, Judges, in the above entitled and numbered cause on the 27th day of October 1927, at New Orleans, Louisiana

Appearances: W. H. Watkins, Esq., W. L. Guice, Esq., and Messrs. Lemle, Moreno & Lemle (Mr. Lemle, Sr.), Attorneys for Complainant; Messrs. Dymond & Levy (John Dymond, Jr., Esq.), Percy Saint, Esq., Attorney General; Michael M. Irwin, Esq., Assistant to Attorney General; P. L. Sandoz, Esq., Attorneys for Defendants.

[fol. 166] COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Watkins: When this restraining order was issued we were all anxious to get the temporary injunction heard. Judge Burns was out of Louisiana so we suggested that it be transferred to Atlanta and taken up by the three Judges there.

Mr. Saint, the Attorney General, wrote me a letter in which he said Mr. Irwin had gone to New York and suggested that we make application for temporary injunction

pending the final hearing and this order was issued on the 28th day of September 1927, reading: "Complainants and defendants agreeing thereto, it is ordered, adjudged and decreed that the application of the complainants for a temporary injunction pending final hearing of this cause be and is hereby passed and continued to the hearing and determination of this cause on the merits, the same to be heard, tried and determined by the Court of three Judges heretofore organized, composed of Rufus E. Foster, E. R. Holmes and Louis H. Burns, District Judges.

It is ordered, adjudged and decreed that the defendants have thirty days from this date within which to file answer or other pleas to the original bill of complaint, and that the temporary restraining order heretofore issued be and remain in force until the trial and determination of said cause on the merits.

Ordered, adjudged and decreed this, the 28th day of September, 1927.

(Signed) E. R. Holmes."

[fol. 167] This was approved by all Counsel in the case. Now, thirty days was allowed the Attorney General to file his answer; I think he filed it this morning. It is perfectly satisfactory for Complainants to go ahead with the temporary hearing this morning, but it is not satisfactory for this hearing to be submitted on the merits. We agreed with opposing Counsel to carry out what all of us conceived to be a temporary hearing on application for injunction.

Judge Foster: If you do that the Three Judge Court becomes functus officio if you try it without pressing motion for hearing. The Supreme Court ruled on that.

Mr. Watkins: When I sent the restraining order to Judge Holmes he sent me back an opinion. I read the opinion and I construed the opinion to mean that even if you did not press application for temporary injunction it could still be before three Judges,——

Judge Foster: I have reference to an opinion in the District Court over here in Texas, in which Judge Hutchinson and I think Judge Shepard and myself sat. I tried so many cases there that year I have forgotten the other District Judge there at that time. The Judicial Code says: "In such case," or words to that effect, "on the hearing of the [fol. 168] merits will be before the same tribunal," and I

construe that to mean, as I interpret that opinion, that unless the temporary motion for temporary injunction is pressed to hearing, not merely made, then the three Judge Court has no jurisdiction.

Mr. Watkins: The question of the three Judge Court is only important as to other cases that go to the United States Court of Appeals. I will read you this decision (reading):

Now, there is an application for interlocutory injunction here and it is being pressed; if we could only agree for a temporary injunction to issue that would save the restraining order and postpone the hearing on the merits.

Mr. Sandoz: I emphasized to Counsel the other day when this hearing of today was being arranged that the purpose of the new rule as well as the Statute was to avoid abuse of the writ of injunction, that temporary restraining order should be issued only where irreparable injury resulted.

Judge Burns: Now to take a temporary restraining order issued by a single Judge on an ex-parte motion and continue it beyond the reasonable period fixed by the rule, a period of ten days, would be in direct abuse of authority on the part of the Judge so doing; he has no right in my opinion to do so. The Statute contemplates a hearing in a reasonable [fol. 169] time, and that time is established as ten days. It is manifest that if such order was made and continued from time to time, even by stipulation of the parties, that the order itself would be of doubtful legality. The Judge has no right to ignore the Statute even by agreement of the parties. For that reason I refuse to consider this proposition of Counsel to let the case wait on the merits. I think we ought to hear and determine now whether Plaintiff is entitled to a preliminary injunction. That would dispose of the matter as a three Judge case.

Mr. Watkins: I was informed of your ruling and got ready and came over here to press our application for temporary injunction. It is agreeable to us to take order within sixty days and try on the merits. I am ready this morning.

Mr. Sandoz: We understand the preliminary order is now ceased and shall take this matter up on whether the preliminary injunction shall be granted or not.

Judge Foster: The preliminary order has not ceased.

Mr. Sandoz: We wish to file a plea of estoppal. This pleas reads as follows: (Reading).

In connection with this plea of estoppal we offer the affi- [fol. 170] davit of John Dymond, Jr., together with the annexed copy. The affidavit of Mr. Dymond is as follows:

Judge Foster: It verifies the allegation of the plea. You need not read it; just file them both.

Mr. Sandoz: They are original documents attached to and made part of the exhibit. We direct the Court's attention to the fact that these original documents are signed by the middle of paragraph one by the interested parties in this suit and by the Attorney for the Foster Fountain Company.

Judge Foster: Signed by the Attorney as representing the Foster Fountain Company?

Mr. Dymond: Including Mr. Chinn, President of the Foster Fountain Company, Inc. and Mr. O'Keefe and Mr. Keenedy, Mayor of the City of Biloxi, Miss. The evidence is there in their own handwriting.

Mr. Sandoz: I offer the affidavit of Mr. Percy Viosca, Jr. Director, Fisheries Division of the State of Louisiana, together with the original documents annexed thereto and made part of the affidavit, evidencing the fact the said Foster Fountain Company, Inc, is permitted to conduct fishing operations for salt water fishing in Louisiana since [fol. 171] *since* the adoption of this Act, and particularly pointing out these terms they have printed in them and made part of the contract between the applicant and the State of Louisiana. The original affidavit and annexed documents we offer in evidence.

Mr. Watkins: (Reading affidavit of Alex Mistocis).

Mr. Dymond: May it please the Court, we object to reading the affidavit unless it is offered in evidence.

Mr. Watkins: I have offered them in evidence, filed with the Clerk.

Mr. Dymond: They have not been offered yet. It is understood you will offer them?

Mr. Watkins: I consider that part of the record, filed with the Clerk.

Judge Foster: Filed with the Bill?

Mr. Watkins: No filed with the Clerk?

Mr. Dymond: If Counsel will offer them we will not object to his reading it.

[fol. 172] Mr. Walkins: I don't think I could be construed as doing anything else.

Judge Foster: Suppose you offer it in evidence.

Mr. Watkins: I offer in evidence all of the papers and exhibits which have been filed in rule.

Mr. Dymond: Adjourned until 2 P. M.

2 P. M. After recess:

Mr. Dymond: Considering the suggestion of the presiding Judge that it is unnecessary to dictate a return to the application for temporary injunction, Solicitors for Defendants offer, introduce and file in evidence the various affidavits, in connection with which copies have been furnished to Solicitors for Complainants, these affidavits consisting of the affidavits of Raymond L. Colson, Charles F. Greiner, Dr. L. H. Jastromaski, James V. Dunbar, Stanley C. Arthur, Percy Viosca, John Dymond, Jr.

Judge Foster: What is the purpose of those affidavits?

[fol. 173] Mr. Dymond: The purpose of those affidavits is to show that this thought on the part of the Complainant that the head and hull industry is a subterfuge, is not a fact and there are twenty-two factories in Louisiana now operating to convert these by-products into a commercial commodity, and one firm alone last year bought $30,000 of that material, and in the case of the Houma plant, make $5,000 a year, and in the case of the Southern Shell Fish Company, Inc. plant, they in the past seven years made two and a half times the capital of the company from the proceeds of the shrimp hulls which they have sold. We also have photographs of the apparatus that is used in the manufacture of that by-product industry.

I know the people of Louisiana are getting forty to fifty thousand dollars a year from this by-product, which they would not get if any of the shrimp went in Mississippi as it has been from year to year.

Objection Mr. Watkins: We want to have noted a general objection to all of the affidavits filed by Defendants on the ground that they are irrelevant and immaterial and hearsay.

[fol. 174] IN UNITED STATES DISTRICT COURT

[Title omitted]

DECREE—Filed December 27, 1927

This cause came on to be heard on the application of plaintiffs for a preliminary injunction and was heretofore submitted upon the pleadings and evidence and argument of counsel, and the court having taken time to consider,

It is ordered, adjudged and decreed that the temporary restraining order heretofore issued herein be recalled and set aside; and,

It is further ordered, adjudged and decreed that the application of plaintiffs for an interlocutory injunction be and the same is hereby denied.

(Signed) Rufus E. Foster, United States Circuit Judge; Louis H. Burns, United States District Judge; E. R. Holmes, United States District Judge.

[fol. 175] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL AND ORDER ALLOWING SAME—Filed January 6, 1928

To the Honorable Rufus E. Foster, Circuit Judge, Louis H. Burns and Edwin R. Holmes, District Judges, Composing Said Court:

Now, come the Foster-Fountain Packing Company and the Seafood Company, complainants in the above entitled cause, and conceiving themselves aggrieved by the order and decree made and entered by the above named Court in the above-entitled cause on the 27th day of December, 1927, wherein, among other things, said Court, composed of Judge Rufus E. Foster, Circuit Judge, Judge Louis H. H. Burns and Judge Edwin R. Holmes, District Judges, under Section 266 of the United States Judicial Code, denied the complainants application for an interlocutory injunction in said cause and recalled the restraining order

previously issued in said cause, do hereby appeal to the Supreme Court of the United States from said order and decree, and especially that portion of it denying and refusing the complainant's application for an interlocutory injunction and recalling the order allowing a restraining order previously granted and rendered in said cause, all of which reasons are set forth in the asignment of errors which is filed herewith. In view of the fact that complainants will sustain irreparable harm and damage by reason of the failure and refusal of said Court to grant them an interlocutory injunction, and by reason of the Court's recalling the restraining order previously granted in said [fol. 176] cause, these complainants pray that this, their petition for appeal, may be allowed, and that an order be made by said Court pending said appeal in the Supreme Court of the United States, reinstating the temporary restraining order previously granted in said cause by the Honorable Edwin R. Holmes, District Judge, and granting to the complainants an interlocutory injunction pending the hearing and determination of said cause on appeal to the Supreme Court of the United States.

Complainants further pray that a transcript of the record proceedings and papers upon which said order was made, duly authenticated, may be sent to he Supreme Court of the United States at Washington, D. C.

Dated this the 3rd day of January, 1928.

(Signed) Lemle, Moreno & Lemle, Watkins, Watkins & Eagen, W. L. Guice, Attorneys for Complainants, Foster-Fountain Packing Company and Sea Food Company.

[fol. 177] ORDER ALLOWING APPEAL

This day this cause came on to be heard on the application of the Complainants in the above entitled cause for an appeal to the Supreme Court of the United States from the decree rendered in this cause by three Judges denying the complainants application for an interlocutory injunction and recalling the temporary restraining order previously issued by the Honorable E. R. Holmes, District Judge, on the 6th day of September, 1927. It is ordered, adjudged and decreed that said appeal be and is hereby allowed; and it appearing to the Court that the complainants will sustain

irreparable harm and damage, it is ordered, adjudged and decreed that, pending the appeal from the decree in said cause to the Supreme Court of the United States, that portion of the decree appealed from withdrawing the temporary restraining order heretofore issued, as aforesaid, be and is hereby revoked, suspended and set aside, and said restraining order be and is hereby retained pending the hearing and determination of said cause on appeal before the Supreme Court of the United States, provided the complainants shall execute and file in this cause a bond to be approved by the Clerk of this Court in the penal sum of $2,000.00 payable to the State of Louisiana, conditioned as provided by law.

Ordered, adjudged and decreed, this the 3rd day of January, 1928.

(Signed) Rufus E. Foster, Circuit Judge; Louis H. Burns, District Judge; E. R. Holmes, District Judge.

1/3/28.

We have no objection to the granting of the within order if the Court so desires.

(Signed) M. M. Irwin, Asst. to Atty. General.

[fols. 178 & 179] In United States District Court

[Title omitted]

Assignment of Errors—Filed January 6th, 1928

Now, come complainants, Foster-Fountain Packing Company and the Sea Food Company, and file the following assignment of errors upon which they will rely on their appeal from the decree made by this Court on the 27th day of December, 1927, in the above entitled cause:

(1) The Court erred in denying the complainant's application for an interlocutory injunction.

(2) The Court erred in recalling the temporary restraining order granted by the Honorable E. R. Holmes, District Judge, upon the 6th Day of September, 1927.

(3) The Court erred in not granting in interlocutory injunction to the complainants on their application therefor, and holding that the complainants were not entitled to an interlocutory injunction on their said application.

(4) The Court erred in not retaining the restraining order issued by the said E. R. Holmes, District Judge, as aforesaid.

(5) The Court erred in holding that the complainants were not entitled to the interlocutory injunction applied for.

(6) Other causes to be shown at the hearing.

(Signed) Lemle, Moreno & Lemle, Watkins, Watkins & Eagan, W. L. Guice, Attorneys for the Complainants.

[fol. 180] Bond on Appeal for $2,000.00 approved and filed Jan. 10, 1928, omitted in printing

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[fol. 181] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR EXTENSION OF TIME TO FILE TRANSCRIPT OF RECORD AND ORDER ALLOWING SAME—Filed January 26, 1928

To the Honorable Louis H. Burns, United States District Judge; Honorable E. R. Holmes, United States Circuit Judge, and Honorable Rufus E. Foster, United States Circuit Judge for the Eastern District of Louisiana, New Orleans Division:

The petition of Foster-Fountain Packing Company and Seafood Company, with respect shows:

I

That on the 27th day of December, 1927, there was rendered by your Honors a decree denying to the complainants a temporary injunction against the defendants, E. J. Haydel, Fred Schouest, L. R. Cabriac, Louis A. Marks,

Sheriff of St. Bernard Parish, State of Louisiana, Ernest Alberti, Sheriff of Plaquemine Parish, State of Louisiana, Leander H. Perez, District Attorney for the Parishes of St. Bernard and Plaquemine, State of Louisiana, Percy Saint, Attorney General of the State of Louisiana, Valentine K. Irion, Commissioner of Conservation of the State of Louisiana, all residents of the State of Louisiana, and recalling the temporary restraining order and denying the application for the interlocutory injunction as prayed for in the original bill in this cause, and your petitioners do further show that they have been allowed by your Honors an appeal to the Supreme Court of the United States from that decree and that citation has been issued by your Honors for all the defendants, returnable on the 2nd day of February, 1928.

[fol. 182] II

That your petitioners do further show that because the working force of the District Court, which is preparing this record, has been greatly reduced in its efficiency, due to recent illnesses among the clerks in the office preparing the transcript in this cause, and because of necessary work to be done in other important matters, your petitioners do not believe that they will be able to file the record in the Supreme Court of the United States by the 2nd day of February, 1928, which belief is confirmed by the attached certificate and affidavit made by Mr. C. D. Shaw, Chief Deputy Clerk of the District Court of the United States for the Eastern District of Louisiana, Orleans Division, Fifth Circuit, which certificate and affidavit are annexed hereto and made part hereof for consideration

The premises considered, your petitioners pray that they be granted an enlargement of time in which to file the record in the Supreme Court of the United States and that they be allowed thirty days from February 2nd, 1928, in addition to the time allowed by law, and, as in duty bound, your petitioners will ever pray, etc.

(Signed) W. H. Watkins, Lemle, Moreno & Lemle, Attys. M. L. Guice, McCloskey & Benedict, Attys.

STATE OF LOUISIANA,
Parish or Orleans:

Before me, the undersigned authority, personally came and appeared Claude D. Shaw, who being by me duly sworn, deposes and says:

That he is the Chief Deputy Clerk in and for the District Court of the United States for the Eastern District of Louisiana; that he is supervising the preparation of the transcript in the matter of the Foster-Fountain Co., Inc., et al. [fol. 103] versus E. J. Haydel, et al., No. 18,897 of the docket of the heretofore mentioned court; that because of the voluminous record and the great amount of testimony, together with the number of exhibits which must be filed, and, further that because of illness among the other clerks in the office preparing the transcript, he is unable to have the record prepared in the proper form for the purpose of having it presented by the petitioners, to the United States Supreme Court on the day set as the return day by this Honorable Court, say, February 2nd, 1928, and that an additional time is necessary for the purpose of completing the transcript.

(Signed) C. D. Shaw.

Sworn to and subscribed before me this 26th day of January, 1928. (Signed) Geo. D. Levevich, Dy. Clerk. (Seal.)

[fol. 19] ORDER EXTENDING TIME

This cause came on this day to be heard on the part of Foster-Fountain Company, Inc., et al. vs. E. J. Haydel, et al., complainants and appellants in the above styled cause, praying for an enlargement of time in which to file the record in this cause in the Supreme Court of the United States,

And, it appearing to the Court that the record is voluminous, contains many exhibits and a great many pages of testimony, and that because of illness of the clerks in the office preparing the transcript the complainants will hardly have time to file the said record in the Supreme Court of

the United States by the 2nd day of February, A. D. 1928, which is the time required by law.

It is thereupon ordered, adjudged and decreed that the said complainants and appellants be and they are hereby allowed, in addition to the thirty days allowed them by law, fifteen days from February 2nd, 1928, in which to file the record in this cause in the Supreme Court of the United States.

Ordered, adjudged and decreed this 26 day of January, 1928.

(Signed) Rufus E. Foster, Circuit Judge. E. R. Holmes, Judge. Louis H. Burns, Judge.

[fol. 185] In United States District Court

[Title omitted]

Praecipe for Transcript of Record—Filed January 14th, 1928

(1) Original bill of complaint, with exhibit thereto.

(2) Decree District Judge granting temporary restraining order.

(3) Temporary restraining order with returns thereupon.

(4) Motion of complainants for a permanent injunction.

(5) Agreement between complainants' and defendants' counsel in respect thereto.

(6) Decree continuing hearing on application for permanent injunction.

(7) Decree continuing application for interlocutory injunction to final hearing.

(8) Answer of defendants with all exhibits thereto.

(9) Plea of estoppel of defendants and affidavit in support thereof.

(10) Each and every affidavit offered by the complainants with exhibits thereto.

(11) Each and every affidavit offered by the defendants with exhibits thereto.

(12) All testimony offered in open court by the complainants and defendants on the hearing of the application for interlocutory injunction.

(13) Order denying application for interlocutory injunction.

(14) Petition for appeal to the Supreme Court of the United States with application for reinstatement of temporary restraining order.

(15) Decree of three judges allowing appeal and reinstating temporary restraining order.

(16) Bond on appeal.

(17) Each and every order or decree entered in the cause not hereinbefore specially set out.

(Signed) Gustave Lemle, W. Lee Guice, Watkins, Watkins & Eager, Attorneys for Complainants.

[fol. 186] State of Mississippi,
Hinds County:

Personally came before me, the undersigned officer in and for the aforesaid state and county, the within named William H. Watkins, of counsel for complainants in the above-entitled cause, who, by me being duly sworn, makes oath that he has this day sent by United States mail, postage prepaid, to the Honorable Percy Saint, Attorney General of the State of Louisiana, at New Orleans in the State of Louisiana, a true and correct copy of the foregoing praecipe.

(Signed) William H. Watkins.

Sworn to and subscribed before me, this 11th day of January, 1928. (Signed) M. J. Conerly, Notary Public. (Seal.)

[fol. 187] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 188-194] Citation, in usual form, showing service on Louis A. Marks et al., filed January 25, 1928; omitted in printing.

[fol. 195] THE UNITED STATES OF AMERICA:

DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF LOUISIANA

The President of the United States to Percy Saint, Attorney General of State of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, D. C., within 30 days from date hereof, pursuant to a petition and order for appeal filed in the Clerk's Office of the District Court of the United States for the Eastern District of Louisiana, wherein Foster-Fountain Company, Inc. et als., are Appellants and E. J. Haydel et als., are Appellees, in the cause entitled Foster Fountain Company, Inc. et als., plaintiffs vs. E. J. Haydel et als., defendants, No. 18,897 of the Docket of this Court to show cause, if any there be, why the judgment rendered against the said Foster Fountain Company, Inc. et als., as in said Petition and Order for Appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Louis H. Burns, Judge of the United States District Court, at New Orleans, La., this 16th day of January in the year of our Lord one thousand nine hundred and twenty-eight.

(Signed) Louis H. Burns, Judge.

Clerk's office: A true copy. H. W. Mehan, Dy. Clerk. New Orleans, La., Jan. 16, 1928. (Seal.)

[fol. 196] SUPREME COURT OF THE UNITED STATES

STATEMENT OF APPELLANTS AND PLAINTIFFS IN ERROR UNDER PARAGRAPH 9, RULE 11—POINTS ON WHICH THEY EXPECT TO RELY AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed February 21, 1928

Point 1

Act #103 passed at the session of the Louisiana legislature of 1926, approved July 8, 1926, each and every section thereof, especially sections 4, 10, 12, 13, 14, 15, 16, 19 and

21 of said act, are in contravention of and violate the Fourteenth Amendment to the Constitution of the United States, in that said act, and each and every section thereof, and especially the sections hereinbefore specifically enumerated, deprive appellants and plaintiffs in error, and each of them, of their property without due process of law, and deny to the plaintiffs in error and appellants and each of them the equal protection of the law.

Point 2

Act #103 passed at the 1926 session of the Louisiana legislature, approved July 8, 1926, and each and every section thereof, and especially sections 4, 10, 12, 13, 14, 15, 16, 19 and 21 of said act, as enforced and construed by the officers of the state of Louisiana, charged with the enforcement of said act, are in contravention of and violate the Fourteenth Amendment to the Constitution of the United States, in that said act and each and every section thereof, and especially the sections hereinbefore specifically enumerated, deprive appellants and plaintiffs in error and each of them of their property without due process of law, and deny to the plaintiffs in error and appellants and each of them the equal protection of the law.

[fol. 197] Point 3

Act #103 passed at the 1926 session of the Louisiana legislature, approved July 8, 1926, and each and every section thereof, and especially sections 4, 10, 12, 13, 14, 15, 16, 19 and 21 of said act, violate paragraph three (3) Section eight (8) Article One (1) of the Constitution of the United States, known as the Commerce Clause of the Constitution of the United States.

Point 4

Act #103 passed at the 1926 session of the Louisiana legislature, approved July 8, 1926, and each and every section thereof, and especially sections 4, 10, 12, 13, 14, 15, 16, 19 and 21 of said act, as enforced and construed by the officers of the state of Louisiana, charged with enforcement thereof, are in contravention of and violate paragraph three (3) section eight (8) article one (1) of the Constitution of

the United States, known as the Commerce Clause of the Constitution of the United States.

Point 5

Act #103 passed at the 1926 session of the Louisiana legislature, approved July 8, 1926, and each and every section thereof, and especially sections 4, 10, 12, 13, 14, 15, 16, 19 and 21 of said act, are in contravention of and violate paragraph one (1) section ten (10) article one (1) of the Constitution of the United States, prohibiting a state from passing any law impairing the obligation of contracts.

Point 6

Act #103 passed at the 1926 session of the Louisiana legislature, approved July 8, 1926, and each and every section thereof, and especially sections 4, 10, 12, 13, 14, 15, 16, 19 and 21 of said act, as enforced and construed by the officers of the state of Louisiana, charged with enforcement thereof, are in contravention of and violate paragraph one (1) section ten (10) article one (1) of the Constitution of the United States, prohibiting a state from passing any law impairing the obligation of contracts.

[fol. 198] Point 7

Act #103 passed at the 1926 session of the Louisiana legislature, approved July 8, 1926, and each and every section thereof, and especially sections 4, 10, 12, 13, 14, 16, 19 and 21 of said act, and each of them, are in contravention of and violate paragraph one (1) section two (2) article four (4) of the Constitution of the United States, providing that the citizens of each state shall be entitled to the privileges and immunities of citizens of the several states.

Point 8

Act #103 passed at the 1926 session of the Louisiana legislature, approved July 8, 1926, and each and every section thereof, and especially sections 4, 10, 12, 13, 14, 15, 16, 19 and 21 of said act, and each of them, as construed and enforced by the officers of the state of Louisiana charged

with enforcement thereof, are in contravention of and violate paragraph one (1) section two (2) article four (4) of the Constitution of the United States, providing that the citizens of each state shall be entitled to the privileges and immunities of citizens of the several states.

Point 9

Act #103 passed at the 1926 session of the Louisiana legislature, approved July 8, 1926, and each and every section thereof, and especially sections 4, 10, 12, 13, 14, 15, 16, 19 and 21 of said act, and each of them, are in contravention of and violate section fourteen (14) article nineteen (19) of the Constitution of the state of Louisiana, prohibiting conspiracies and combinations in restraint of trade, monopolies, etc.

Point 10

The three-judge court should have granted the application of appellants and plaintiffs in error for an interlocutory injunction pending the hearing under the pleadings and proof in th-s case. Their failing and refusing to do so was error.

[fol. 199]

Point 11

The record discloses serious questions of law arising under the federal constitution and serious questions of discrimination supported by affidavits and proof, and that the plaintiffs in error and appellants will sustain serious and irreparable harm and injury by reason of the failure of the three-judge court to grant the application of appellants and plaintiffs in error for an interlocutory injunction pending the hearing. It was, therefore, error not to grant the application of appellants and plaintiffs in error.

Point 12

The granting of the interlocutory injunction prayed for by appellants and plaintiffs in error was required in order to prevent appellants and plaintiffs in error from suffering irreparable harm and injury pending the hearing and determination of the validity of the Louisiana act complained of and each section thereof as being in violation of the federal constitution of the United States hereinbefore

referred to, and in view of the seriousness of the alleged charges in respect to the invalidity of said act and the especial sections thereof hereinbefore set out, and in view of the affidavits filed in support thereof, and in view of the irreparable harm, injury and damage which the appellants and plaintiffs in error will suffer by reason of the enforcement of the act, the three-judge court should have granted the application of plaintiffs in error and appellants for an interlocutory injunction pending the hearing and determination in this cause.

Point 13

The hearing and determination of the correctness of the action of the three-judge court in failing and refusing to grant to the plaintiffs in error and appellants an interlocutory injunction pending the hearing of said cause on the merits, this court will accept as true the affidavit and proof offered by the appellants and plaintiffs in error, in support of the allegations contained in the original bill of complaint.

[fol. 200]

Point 14

In determining as to whether or not the three-judge court committed error in failing and refusing to grant plaintiffs in error and appellants an interlocutory injunction pending the hearing and determination of this cause, on final hearing, this court will consider the affidavits and proof offered by plaintiffs in error and defendants de novo, and will determine for itself as to whether or not the application of appellants and plaintiffs in error should have been granted.

Point 15

Where a state statute is attacked as being in violation of the constitution of the United States, and charges of invalidity are made in good faith, and are serious, or where the allegations and proof contain charges of discrimination in the enforcement of the act, and where the plaintiffs will suffer irreparable harm, injury and damage by reason of the enforcement thereof, an interlocutory injunction should always be granted pending the hearing and determination of the cause on the merits.

Point 16.

Act #103 passed at the 1926 session of the Louisiana legislature, approved July 8, 1926, and especially sections 4, 10, 12, 13, 14, 15, 16, 19 and 21 of said act, were not passed by the legislature of the state of Louisiana in the legimate exercise of its police powers, but are a mere subterfuge, and as passed and enforced, directly affect and obstruct interstate commerce between the states and foreign countries.

Point 17

Act #103 passed at the 1926 session of the Louisiana Legislature, approved July 8, 1926, and especially sections 4, 10, 12, 13, 14, 15, 16, 19 and 21 of said act, were not passed in the exercise of any legitimate police power of the State of Louisiana, but as passed and enforced were intended and do deprive appellants and plaintiffs in error of their property without due process of law and deny them the equal protection of the law.

[fols. 201 & 202] Point 18

A state, in the exercise of its police power, can pass no law directly affecting interstate commerce.

Point 19

Act #103 passed at the 1926 session of the Louisiana state legislature, and especially sections 4, 10, 12, 13, 14, 15, 16, 19 and 21 of said act, were not passed for the purpose of conserving the natural resources of the state, but passed for the purpose alleged, and in the enforcement and operation thereof necessarily violate the Fourteenth Amendment of the Constitution of the United States, in the particulars hereinbefore set forth, and impose a direct burden upon interstate commerce.

Point 20

Under the facts in this case and the law applicable thereto the application for interlocutory injunction should have been granted.

W. H. Watkins, Gustave Lemle, W. L. Guice, Attorneys for Plaintiffs in Error and Appellants.

[fols. 203 & 204] STATEMENTS OF APPELLANTS AND PLAINTIFFS IN ERROR OF THE PARTS OF THE RECORD WHICH THEY DEEM NECESSARY FOR THE CONSIDERATION THEREOF

Appellants and plaintiffs in error deem that the parts of the record hereinafter referred to are necessary for a proper consideration of the case.

1. Original bill of complaint with exhibits thereto.
2. Decree of district judge granting temporary restraining order.
3. Application of appellants and plaintiffs in error for injunction pending the hearing.
4. Agreement between appellants, plaintiffs in error, and defendants' counsel in respect thereto.
5. Decree continuing the hearing on application for interlocutory injunction to final hearing.
6. Answer of defendants with exhibits thereto.
7. Plea of estoppel of defendants and affidavits in support thereof.
8. Each and every affidavit offered by the appellants and plaintiffs in error, with exhibits thereto.
9. Each and every affidavit offered by defendants with exhibits thereto.
10. Order denying application for interlocutory injunction.
11. Petition for appeal and decree allowing the same.
12. Bond and assignment of error.
13. Each and every decree or order made in the cause.

W. H. Watkins, Gustave Lemle, W. L. Guice, Attorneys for Appellants and Plaintiffs in Error.

[fol. 205] STATE OF MISSISSIPPI,
Hinds County:

Personally came before the undersigned officer in and for the aforesaid state and county, the within named William H. Watkins, who by me being first sworn, makes oath that he is one of the attorneys for the plaintiffs in error and appellants in the case of Foster Fountain Packing Company and Seafood Company vs. Haydel, being cause No. 768 on the docket of the Supreme Court of the United States,

October Term, 1927; that he is authorized to make this affidavit; that upon the 18th day of February, 1928, he sent to the Honorable Percy Saint, Attorney-General of the State of Louisiana, a true and correct copy of the statements and the points on which appellants and plaintiffs in error expect to rely, in the Supreme Court of the United States, in the prosecution of their appeal in said case, and of the parts of the record they think necessary for the consideration thereof.

W. H. Watkins.

Sworn to and subscribed before me this the 18th day of February, 1928. M. J. Conerly, Notary Public. (Seal M. J. Conerly, Notary Public, Hinds County, Mississippi.)

[fol. 206] [File endorsement omitted.]

[fol. 207] IN UNITED STATES SUPREME COURT

DESIGNATION OF ADDITIONAL PARTS OF RECORD TO BE PRINTED—Filed March 2, 1928

Hon Charles Elmore Cropley:

Print entire record Haydel cases as filed in your office including portions designated by appellants as well as all other portions not designated by them.

Peyton R. Sandoz, Asst. Attorney General, 403 New Court Bldg.

[File endorsement omitted.]

Endorsed on cover: File No. 33,220. E. Louisiana D. C. U. S. Term No. 768. Foster-Fountain Packing Company, Inc., and Sea Food Company, appellants, vs. E. J. Haydel, Fred Schouest, L. R. Cabriac, et al. Filed February 14th, 1928. File No. 33,220.